

CHAPTER 59
PLUMBING AND MECHANICAL SYSTEMS BOARD—FAIR INFORMATION
PRACTICES AND PUBLIC RECORDS

641—59.1(17A,22) Definitions. As used in this chapter:

“*Agency*” or “*board*” means the Iowa plumbing and mechanical systems board.

“*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 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, 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 board, or a person lawfully delegated authority by the board to act for the board 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 the board.

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

[ARC 0457C, IAB 11/14/12, effective 12/19/12]

641—59.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records and 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; board staff shall cooperate with members of the public in implementing the provisions of that chapter.

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641—59.3(17A,22) Requests for access to records.

59.3(1) Location of record. A request for access to a record should be directed to the board’s executive officer or the board office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to Iowa Plumbing and Mechanical Systems Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. If a request for access to a record is misdirected, board personnel will promptly forward the request to the appropriate person within the agency.

59.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. excluding Saturdays, Sundays, and legal holidays.

59.3(3) Request for access. Requests for access to open 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 records. Mail or telephone 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.

59.3(4) Response to requests. Access to an open record shall be provided promptly by the custodian upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the

requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

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 sections 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 641—59.4(17A,22) and other applicable provisions of law.

59.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from board files. Examination and copying of board records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

59.3(6) Copying. A reasonable number of copies of an open record may be made in the board's office. If photocopy equipment is not available in the board office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

59.3(7) Fees.

a. When charged. The board may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the board shall be prominently posted in the board office. Copies of records may be made by or for members of the public on board photocopy machines or from electronic storage systems at cost as determined and posted in the board office by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. 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 when the time required is in excess of one hour. The custodian shall prominently post in the board office the hourly fee to be charged for search and supervision of records. That hourly fee shall not be in excess of the hourly wage of a board clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) 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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641—59.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under 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 641—59.3(17A,22).

59.4(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.

59.4(2) Requests. The custodian may require a request to examine and copy a confidential record to 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.

59.4(3) Notice to subject of record and opportunity to obtain injunction. 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 indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

59.4(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 that is signed by the custodian and that 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 this requester.

59.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

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641—59.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. 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, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

59.5(1) Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, 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.

59.5(2) Request. A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the board by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

59.5(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. However, if a person who has submitted business information to the board does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

59.5(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 is filed, or when the custodian receives a request for access to the record by a member of the public.

59.5(5) Request granted or deferred. If a request for such 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 decision to grant the request or to defer action upon the request will be made

available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

59.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

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641—59.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and 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 board proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian or to Iowa Plumbing and Mechanical Systems Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.

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641—59.7(17A,22) Consent to disclosure by the subject of a confidential record. 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 or records 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 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. (Additional requirements may be necessary for special classes of records.) Appearance of counsel before the board on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the board to disclose records about that person to the person's attorney.

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641—59.8(17A,22) Notice to suppliers of information. When the board requests a person to supply information about that person, the board shall notify the person of the use that will be made of the 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 given in these rules, on the written form used to

collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

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641—59.9(17A,22) Disclosures without the consent of the subject.

59.9(1) Open records are routinely disclosed without the consent of the subject.

59.9(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 641—59.10(17A,22) or in the notice for a particular record system.

b. 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.

c. Investigative information in the possession of the board or its employees or agents which relates to license discipline may be disclosed to appropriate licensing authorities within the state, the appropriate licensing authority in another state, the District of Columbia, or territory or country in which the licensee is licensed or has applied for a license. If the investigative information in the possession of the board or its employees or agents indicates a crime has been committed, the information shall be reported to the proper law enforcement agency.

d. To the legislative services agency under Iowa Code section 2A.3.

e. Disclosures in the course of employee disciplinary proceedings.

f. In response to a court order or subpoena.

g. To the office of citizens' aide pursuant to Iowa Code section 2C.9.

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641—59.10(17A,22) Routine use.

59.10(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. "Routine use" includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

59.10(2) To the extent allowed by law, the following uses are considered routine use of all board records:

a. Disclosure to those 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 office 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 and the attorney general's office for the matters in which they are performing services or functions on behalf of the board.

d. Transfers of information within the board office and among board members, to other state boards and departments, or to local units of government as appropriate to carry out the board's statutory authority.

e. Disclosure of information relating to staff of federal and state entities for audit purposes or for purposes of determining whether the board is operating a program lawfully.

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

g. Disclosures to the public and news media of pleadings, motions, orders, final decisions, and informal settlements filed in licensee disciplinary proceedings.

h. Transmittal to the district court of the record in a disciplinary hearing, pursuant to Iowa Code section 17A.19(6), regardless of whether the hearing was open or closed.
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641—59.11(17A,22) Consensual disclosure of confidential records.

59.11(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 641—59.7(17A,22).

59.11(2) *Complaints to public officials.* A letter from the 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 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.

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641—59.12(17A,22) Release to subject.

59.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 641—59.6(17A,22). However, the board need not release the following records to the subject:

a. The identity of a person providing information to the board 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.

d. As otherwise authorized by law.

59.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the board shall take reasonable steps to protect confidential information relating to another subject.

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641—59.13(17A,22) Availability of records.

59.13(1) *General.* Board records are open for public inspection and copying unless otherwise provided by rule or law.

59.13(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. All information in complaint and investigation files maintained by the board, or peer review committee acting under the authorization of the board, for purposes of license discipline is confidential in accordance with Iowa Code section 272C.6(4), except that the information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges and a notice of hearing.

b. The record of a disciplinary hearing which is closed to the public pursuant to Iowa Code section 272C.6(1) is confidential under Iowa Code section 21.5(4). However, in the event a record is transmitted to the district court pursuant to Iowa Code section 17A.19(6) for purposes of judicial review, the record shall not be considered confidential unless the district court so orders.

c. Minutes and tape recordings of portions of board meetings held in closed session, pursuant to Iowa Code section 21.5(4).

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

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) "e."

f. Those portions of board staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by 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 pursuant to Iowa Code sections 17A.2 and 17A.3 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. Information in nonlicensee and investigation files maintained by the board which is otherwise exempt from disclosure under Iowa Code section 22.7 or other provision of law.

59.13(3) Authority to release confidential records. The board may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other provision of law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited discretionary disclosure as provided in rule 641—59.4(17A,22). 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 59.4(3).

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641—59.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the board by personal identifier in record systems as defined in rule 641—59.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information, and the means of storage of that information. The board does not use a data processing system to match, collate, or permit 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 as follows:

59.14(1) Records of board disciplinary hearings. These records contain information about licensees who are the subject of a board disciplinary proceeding or other action. This information is stored on paper, and electronically in the event the hearing is tape-recorded.

59.14(2) Complaint reports. These records contain information about licensees and the people they serve. This information is collected pursuant to Iowa Code sections 272C.3 and 272C.4. This information is stored on paper only.

59.14(3) Investigative reports. These records contain information about the subjects of board investigations and the activities of board investigators. The records may include a variety of attachments such as interviews, audits, medical records, exhibits, police reports, and investigators' comments, conclusions, and recommendations. This information is collected pursuant to Iowa Code sections 272C.3, 272C.4, and 272C.5. This information is stored on paper and electronically.

59.14(4) Declaratory rulings.

59.14(5) Licensure records. These records contain information about the licensee including any or all of the following: applications for examination, collected pursuant to Iowa Code section 105.5; applications for licensure, collected pursuant to Iowa Code section 105.8; references, collected pursuant to Iowa Code section 105.18; examination scores, collected pursuant to Iowa Code section 105.18; past felony records, collected pursuant to Iowa Code section 105.18; and continuing education records, collected pursuant to Iowa Code section 272C.2. This information is stored on paper and electronically.

59.14(6) Information on nonlicensee complaint and nonlicensee investigation files maintained by the board. This information is collected pursuant to Iowa Code chapter 105. This information is stored on paper.

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641—59.15(17A,22) Other groups of records routinely available for public inspection. This rule describes groups of records maintained by the board other than record systems as defined in rule 641—59.2(17A,22). These records are not maintained or retrieved by personal identifiers. These records are routinely available to the public. However, the board's files of these records listed in subrules 59.14(1) to 59.14(6) may contain information about individuals. The information stored electronically includes names, business addresses, current status of licenses, licensee number, and statistical information pertaining to individuals. All other information is stored on paper and electronically. Other groups of records routinely available for public inspection include:

59.15(1) Records of board rule-making procedures. Rule-making records may contain information about individuals making written or oral comments on proposed rules.

59.15(2) Agendas, minutes, and materials presented to the board are available from the office of the board, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Records which are exempt from disclosure may contain information about individuals who participate in board meetings.

59.15(3) Publications. News releases, annual reports, project reports, and board newsletters are available from the office of the board. Brochures describing various board programs are available at the office of the board.

Board news releases, project reports, and newsletters may contain information about individuals, including board members or staff.

59.15(4) Statistical reports. Statistical reports do not contain personally identifiable information.

59.15(5) Board decisions, final orders or agreements, advisory opinions, and other statements of law or policy issued by the board in the performance of its functions. These records are open pursuant to Iowa Code section 272C.6(4) except for information that is confidential pursuant to paragraph 59.13(2) "c."

59.15(6) Financial reports pertaining to the board's budget including its revenues and expenses. This information is stored electronically and on paper.

59.15(7) Blank forms utilized by the board and its staff in the performance of its function. This information is stored on paper only.

59.15(8) A record inventory of all categories of information and records kept by or on behalf of the board. This inventory is stored on paper only.

59.15(9) All other records that are not exempt from disclosure by law.
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641—59.16(17A,22) Applicability. This chapter does not:

1. Require the board 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 board 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 board in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any individual or party subject 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 board.

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These rules are intended to implement Iowa Code section 22.11.

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