

CHAPTER 6
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The department of agriculture and land stewardship 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.

21—6.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)" insert "department of agriculture and land stewardship".

21—6.3(17A,22) Requests for access to records.

6.3(1) Location of record. In lieu of the words "(insert agency head)" insert "secretary of agriculture". In lieu of the words "(insert agency name and address)" insert "the Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319".

6.3(2) Office hours. In lieu of the parenthetical statement, insert "8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays".

6.3(7) Fees.

a. When charged. 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.

c. Supervisory fee. In lieu of the words "specify time period" insert "one-half hour".

21—6.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)" insert "the secretary of agriculture".

21—6.9(17A,22) Disclosures without the consent of the subject.

6.9(1) Open records are routinely disclosed without the consent of the subject.

6.9(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 6.10(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.

21—6.10(17A,22) Routine use.

6.10(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.

6.10(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.

21—6.11(17A,22) Consensual disclosure of confidential records.

6.11(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 6.7(17A,22).

6.11(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.

21—6.12(17A,22) Release to subject.

6.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 6.6(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.

6.12(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.

21—6.13(17A,22) Availability of records.

6.13(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

6.13(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.

6.13(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 6.4(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 6.4(3).

21—6.14(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 6.1(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. Unless otherwise stated, the authority for this department to maintain the record is provided by Iowa Code chapter 159. The record systems maintained by the agency are:

6.14(1) 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. This material includes personally identifiable information such as name, address, social security number and employee payroll number. Some of this information is confidential under Iowa Code section 22.7(11). These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

6.14(2) 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. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

6.14(3) Contested case matters. These records are collected and maintained pursuant to Iowa Code sections 17A.3(1) "d," 17A.3(2), 17A.12, and Iowa Code chapters and sections noted in subrules 6.14(4) and 6.14(5). Contested case matters include all pleadings, motions, briefs, orders, transcripts, exhibits,

and physical evidence utilized in the resolution of the matter. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

6.14(4) *Licensure, permit or certification records.* The department regulates by license, permit, or certification a number of agriculture-related practices, under various chapters of the Iowa Code. Licensing records generally include, but are not limited to, information identifying the licensee by name, location, and form of business entity, including the names of corporate principals. Examination and compliance reports may be included in the license records. These records may include confidential information protected from disclosure under Iowa Code section 22.7(3), 22.7(6), or 22.7(18). These licensing records include but are not limited to:

a. Animal industry. Under Iowa Code chapters 163, 163A, 164, 165, 166C, 169A, and 172B, the department maintains records regarding regulation of animal health, including, but not limited to: calfhood vaccination tags, filed under the name of the administering veterinarian, identified by code, or for some disease vaccinations, by name or code of herd owner; swine and cattle approved premises, license filed by county and premises number, identified by owner's name or code; livestock market and agents and livestock dealers and agents, license identified by name or code; quarantine orders, identified by herd owner's name or code; bull breeder's license, identified by owner's name or code; livestock importation certificates, identified by name or code of Iowa purchaser; slaughter affidavits, identified by herd owner's name or code; brand certificates, identified by owner's name or code; large and small animal health certificates, identified by owner's name or code.

Under Iowa Code chapter 162, the department maintains records regarding the regulation of animal welfare, including, but not limited to: state kennel licenses or federal registrations, identified by owner's name or code; state pound certification or federal registrations, identified by owner's name or code; state shelter certification or federal registration, identified by owner's name or code; dealer's license or federal registration, identified by name or code.

Under Iowa Code chapters 189 and 189A, the department maintains records regarding the regulation of meat and poultry, including but not limited to: licensing of meat or poultry processing plants, identified by plant owner's name or code; registration of labeling, formulation, and processing procedures, identified by plant owner's name or code; inedible permits, identified by plant owner's name or code.

Under Iowa Code chapter 169, the department maintains jointly with the board of veterinary medicine records regarding the licensure of veterinarians and animal technicians, identified by name or code. In addition to general provisions, these records may include information deemed confidential under Iowa Code section 272C.6.

These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

b. Grain warehousing. Under Iowa Code chapters 203, 203A, and 203C, the department maintains records regarding the licensure of grain dealers, grain bargaining agents, grain sellers, and grain warehouses, identified by licensee's name or code. These files may contain information which is confidential under Iowa Code section 22.7(12), 203.16, or 203C.24, specifically including financial statements. Files cross-referenced by licensee name or code include receivership files and indemnity fund claim files, which records identify both the licensee and the names of claimants against the licensee. The latter records are maintained jointly with the grain indemnity fund board. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

c. Dairy products. Under Iowa Code chapters 189, 190, 190A, 191, 192, 194, and 195, the department maintains records regarding the regulation of dairy products, including but not limited to: milk plant permit, identified by owner's name or code; grade "A" farm permit, identified by operator's name or code; grade "B" farm permit, identified by operator's name or code; hauler/grader license, identified by person's name or code; tester license, identified by person's name or code; milk truck license, identified by owner's name or code. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

d. Horse and dog breeding. Under Iowa Code section 99D.22, the department maintains records regarding the registration of Iowa-foaled horses and Iowa-whelped dogs, including but not limited to: Iowa stallion eligibility certificate, identified by owner's name or code; brood mare registration, identified by owner's name or code; Iowa-foaled horse certification, identified by breeder's name or code; Iowa-whelped litter registration, identified by breeder's name or code; Iowa-whelped individual registration, identified by owner's name or code. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

e. Weights and measures. Under Iowa Code chapters 208A, 212, 214, 214A, 215, and 215A, the department maintains records regarding the regulation of weights and measures, including but not limited to: antifreeze permit, identified by manufacturer's name or code; public scale license, identified by owner's name or code; service agency's bond, identified by person's name or code; servicer's license, identified by person's name or code. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

f. Pesticides. Under Iowa Code chapter 206, the department maintains records regarding the regulation of pesticide use, including but not limited to: commercial pesticide applicator licenses and certifications, identified by person's name or code; private pesticide applicator certification, identified by person's name or code; pesticide product registration, identified by distributor's name or code; pesticide dealer licenses, identified by person's name or code. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

g. Fertilizer. Under Iowa Code chapters 200 and 201, the department maintains records regarding the regulation of fertilizer use, including but not limited to: fertilizer dealer license, identified by person's name or code; registration of bulk fertilizer, identified by manufacturer's name or code; registration of fertilizer sold in packages of 25 pounds or less, identified by manufacturer's name or code; agricultural limestone license, identified by operator's name or code; fertilizer inspection fee report, identified by manufacturer's name or code; groundwater protection fee report, identified by manufacturer's name or code. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

h. Seed. Under Iowa Code chapter 199, the department maintains records regarding agricultural seeds, including but not limited to: seed permit, identified by person's name or code; seed permit holder's bond, identified by person's name or code. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

i. Feed. Under Iowa Code chapter 198, the department maintains records regarding commercial feed, including but not limited to: feed facility registration, identified by manufacturer's name or code; feed manufacturer's product registration (10 pounds or less), identified by manufacturer's name or code; feed manufacturer's product registration (exceeding 10 pounds or in bulk), identified by manufacturer's name or code; semiannual commercial feed tonnage report, identified by manufacturer's name or code; commercial feed tonnage reports, identified by manufacturer's name or code. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

j. Mines and minerals. Under Iowa Code chapters 207 and 208, the department, jointly with the state soil conservation committee, maintains records regarding mines and minerals, including but not limited to: licensed mine operators, identified by operator's name or code; registered mine sites, identified by operator's name or code; permitted coal mine sites, identified by operator's name or code; coal exploration permits, identified by operator's name or code. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

6.14(5) *Nonlicensee investigations and records.* The department has general authority in various areas to regulate agriculture-related practices without the necessity of license issuance. The investigations may be part of a criminal prosecution, and therefore records may be confidential under Iowa Code section 22.7(4). Other reports may be confidential under Iowa Code section 22.7(3), 22.7(6) or 22.7(18). These records will be identified by the name of the subject of the investigation or report. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system. These records include but are not limited to:

a. Apiary investigations pursuant to Iowa Code chapter 160.

- b. Soybean assessment audits, soybean first buyer report, pursuant to Iowa Code chapter 185.
- c. Corn assessment audits, corn promotion board remittance report, pursuant to Iowa Code chapter 185C.
- d. Dairy trade practices price lists, permit fees, pursuant to Iowa Code chapter 192A, confidential pursuant to Iowa Code sections 22.7(6) and 192A.7.
- e. Pesticide residue analysis, pursuant to Iowa Code chapter 206.

6.14(6) Laboratory reports. In furtherance of license or nonlicense regulation of subject areas under subrules 6.14(4) and 6.14(5), the department may prepare laboratory reports consisting of analytical results of samples. These records may include confidential information protected from disclosure under Iowa Code section 22.7(3), 22.7(6), or 22.7(18). These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system. These records are identified by the name of the subject of the investigation.

6.14(7) Grant or loan records. Under Iowa Code chapters 161A and 161B, the soil conservation division of the department maintains records regarding grants and cost-sharing programs, identifying the name of the recipient or applicant. These records are jointly maintained by the division and the state soil conservation committee. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

Under Iowa Code chapter 175, the staff of the agricultural development authority, within the department, maintain records regarding the issuance of bonds and underwriting of loans, identified by the name of the recipient or applicant. These records are jointly maintained by the department and the agricultural development authority. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

21—6.15(17A,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 6.1(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 6.13(17A,22). The records listed may contain information about individuals.

6.15(1) Administrative records. This includes documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions.

6.15(2) Publications. The office receives a number of books, periodicals, newsletters, government documents, etc. 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 law library.

6.15(3) Office publications. This office issues a variety of materials consisting of brochures and pamphlets, press releases, and statistical reports, including but not limited to: crop and weather reports issued by the state climatologist's office; livestock and crop farm reports; sheep newsletter.

6.15(4) Rule-making records. Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection.

6.15(5) Office manuals. Information in office manuals may be confidential under Iowa Code section 17A.2(7) "f" or other applicable provision of law.

6.15(6) Cooperative agreements. The state has entered into cooperative agreements with the United States Department of Agriculture regarding various agricultural practices, including but not limited to warehouse inspection, agricultural statistics, and animal welfare enforcement.

6.15(7) Board, committee, council and commission records. Agendas, minutes, and materials prepared or maintained by the department or various divisions or bureaus of the department are available from the office, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5 or which are otherwise confidential by law. Board, committee, council and commission records contain information about people who participate in meetings. These entities include both statutory entities, such as the state soil conservation committee, the grain indemnity fund board, the veterinary medicine board, and the agricultural development authority, and voluntary advisory committees, such as the feed advisory committee, the pesticide advisory committee, and the agricultural energy management advisory council. This information is collected pursuant to Iowa Code section 21.3. This information is not stored on an automated data processing system.

6.15(8) General soil conservation records. Soil conservation district information, including directory of commissioners, soil surveys, watershed program records, water resource district records, and other program information is maintained jointly by the division of soil conservation and the state soil conservation committee pursuant to Iowa Code chapters 161A and 161B.

6.15(9) General marketing records. Lists of commodity producers, lists of hay and straw producers, an agricultural export directory, lists of farmers' markets, and other forms of marketing information are maintained and made available to the public pursuant to Iowa Code section 159.20.

6.15(10) All other records that are not exempted from disclosure by law.

21—6.16(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.

21—6.17(159,252J) Release of confidential licensing information for child support recovery purposes. Notwithstanding any statutory confidentiality provision, the department may share information with the child support recovery unit through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code Supplement chapter 252J or 598.

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