

CHAPTER 6
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The Iowa board of dental examiners 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.

650—6.1(153,147,22) Definitions. As used in this chapter:

“Agency.” In lieu of the words “agency issuing these rules”, insert “Iowa Board of Dental Examiners”.

650—6.3(153,147,22) Requests for access to records.

6.3(1) Location of record. In lieu of the words “Insert agency name and address”, insert “Iowa Board of Dental Examiners, 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687”.

6.3(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”.

6.3(7) Fees.

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

650—6.6(153,147,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words “designate office”, insert “the executive director”.

650—6.9(153,147,22) 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(153,147,22) 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.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

h. Notwithstanding any statutory confidentiality provision, the board 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 chapter 252J or 598.

i. Notwithstanding any statutory confidentiality provision, the board may share information with the college student aid commission for the sole purpose of identifying applicants or licensees subject to enforcement under Iowa Code sections 261.121 to 261.127.

650—6.10(153,147,22) 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, investigators, members or 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, investigator, or member, 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 and among board members; to other state agencies, boards and departments; federal agencies; to agencies in other states; national associations; or to local units of government as appropriate to administer the agency’s statutory authority.

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. Disclosure to the attorney general’s office for use in performing its official functions.

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

i. 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 opened or closed.

650—6.11(153,147,22) 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(153,147,22).

6.11(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 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.

6.11(3) *Obtaining information from a third party.* The agency is required to obtain information to verify and investigate applications for licensure or permit, complaints concerning licensees, and alleged violations of law and statute. Requests to third parties for this information may involve the release of records requiring special procedures.

a. Where necessary, the agency shall obtain from the subject individual an authorization for the release of specially protected information on a form that meets the requirements of the law.

b. To obtain alcohol and drug abuse patient information, the agency shall obtain special authorization from the subject individual on a “Consent to Release Alcohol and Drug Abuse Patient Information” form or other appropriate form.

c. The agency is authorized by law to subpoena books, papers, records, and any other real evidence, whether or not privileged or confidential under law, to help it determine whether it should institute an administrative hearing.

650—6.12(153,147,22) 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(153,147,22). 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 provisions 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 provisions of Iowa Code section 22.7(5).

d. All information in licensee complaint and investigation files maintained by the board for purposes of licensee discipline are required to be withheld from the subject prior to the filing of formal charges and the notice of hearing in a licensee disciplinary proceeding.

e. As otherwise authorized by state or federal law or rule.

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.

650—6.13(153,147,22) 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. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

b. Prior to initiation of a contested case, all complaint files, investigation files, other investigation reports, and other investigative information in the possession of the board or its employees or agents which relates to licensee or registrant discipline. (Iowa Code section 272C.6(4))

c. Criminal history, prior misconduct or investigative information relating to an applicant for licensure or registration. (Iowa Code section 147.21(1))

d. Information relating to results of an examination for licensure, registration, or certification other than final score except for information about results of an examination which is given to the person who took the examination. (Iowa Code section 147.21(3))

e. Information relating to the contents of an examination for licensure, registration, or certification. (Iowa Code section 147.21(2))

f. Information contained in professional substance abuse reports or other investigative reports relating to the abuse of controlled substances. (Iowa Code section 124.504)

g. Minutes of closed meetings of the board. (Iowa Code section 21.5(4))

h. Records of closed session board disciplinary hearings. (Iowa Code sections 272C.6(1) and 21.5(4))

i. Information or records received from a restricted source and any other information or records made confidential by law.

j. 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."

k. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in conducting audits, in making inspections, in negotiating settlements, 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)

l. 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.

m. Any other records made confidential by law.

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

o. Information in nonlicensee investigation files maintained by the board which are otherwise exempt from disclosure under Iowa Code section 22.7 or other provisions of 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(153,147,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspections as provided in subrule 6.4(3).

650—6.14(153,147,22) 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(153,147,22). 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:

6.14(1) *Information on nonlicensee investigation files maintained by the board.* This information is collected by the board pursuant to the authority granted in Iowa Code sections 147.2, 147.83, 147.84, 147.85, and 147.93. This information is stored on paper only. This information is a public record except to the extent that certain information may be exempt from disclosure under Iowa Code section 22.7 or other provisions of law.

6.14(2) *Information in complaint, compliance, and investigative files maintained by the board for the purposes of discipline.* This information is collected pursuant to Iowa Code sections 153.33, 272C.3, and 272C.9. This information is stored electronically and on paper. This information is required to be kept confidential pursuant to Iowa Code section 272C.6(4). However, information may be released to the licensee or registrant once a disciplinary proceeding is commenced by the filing of a formal statement of charges and the notice of hearing.

6.14(3) *Records of board disciplinary hearings.* These records contain information about licensees and persons under the board's jurisdiction who are subject of a board disciplinary proceeding or other action. This information is collected by the board pursuant to the authority granted in Iowa Code sections 153.23 and 153.33, and chapter 272C. This information is stored electronically and on paper. These records may also contain the following:

a. Formal charges and notices of hearings and final written decisions imposing sanctions, including informal stipulations and settlements. This information is collected by the board pursuant to the authority granted in Iowa Code sections 153.23 and 153.33 and chapter 272C. This information is stored electronically and on paper. This information is a public record pursuant to Iowa Code sections 272C.5 and 272C.6.

b. Court reporter notes, tape recordings, exhibits, pleadings, motions, orders, and other documents that constitute the record in a disciplinary hearing. If a hearing is closed pursuant to Iowa Code section 272C.6(1), the record is confidential under Iowa Code section 21.5(4). This information is collected by the board pursuant to the authority granted in Iowa Code sections 153.23 and 153.33, and chapter 272C. This information is stored on recorder tape or paper only.

6.14(4) *Continuing education records.* These records contain educational information about persons registered or licensed by the board. This information is collected pursuant to the authority granted in Iowa Code section 272C.2. This information is stored on paper only.

6.14(5) *Sponsors of continuing education.* These records contain information concerning continuing education sponsors, annual reports, recertification forms, courses, and attendance sheets. This information is collected pursuant to Iowa Code section 272C.2. This information is stored on paper only.

6.14(6) *Application records.* These records contain information about applicants which may include name, address, telephone number, social security number, place of birth, date of birth, education, certifications, examinations with scores, character references, fingerprints, diplomas and any additional information the board may request. This information is collected by the board pursuant to Iowa Code sections 147.2, 153.21, 153.22, and 153.37 to 153.39. This information is stored electronically and on paper. The personal information contained in these records may be confidential in whole or in part pursuant to Iowa Code sections 147.21(1) to 147.21(3), 22.7(1), and 22.7(19) or other provisions of law.

6.14(7) *Examination records.* These records contain examination information and scores for any of the following examinations: Joint Commission on National Dental Examinations; Joint Commission on National Dental Hygiene Examinations; Central Regional Dental Testing Service, Inc. examinations; Iowa jurisprudence examinations; state radiography examinations; state dental examinations; state dental hygiene examinations; and state dental assistant registration examinations. This information is collected by the board pursuant to Iowa Code sections 147.21 and 147.34. This information is stored electronically and on paper. The information contained in these records is confidential in part pursuant to Iowa Code sections 147.21(2), 147.21(3), 22.7(1), and 22.7(19).

6.14(8) *Licensure, registration, permit or certification records.* These records contain information about currently, previously, or reinstated licensed dentists, dental hygienists, and dental assistants. This information includes name of license, registration, permit or certificate holder, license, registration, permit or certificate number, date issued, current renewal status and current address. This information is collected by the board pursuant to the authority granted in Iowa Code sections 136C.2, 147.2, 147.10, 153.22, 153.23, and 153.30. This information is stored electronically and on paper.

6.14(9) *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).

6.14(10) *Compliance reports.* These records contain information about dentists and their dental facilities which are inspected to determine compliance with board regulations including the use of parenteral sedation, general anesthesia, or nitrous oxide by dentists in dental facilities. This information is collected by the board pursuant to the authority granted in Iowa Code section 153.20. The information contained in these reports is confidential in whole or in part pursuant to Iowa Code sections 22.7(5), 272C.3, and 272C.6(4). This information is stored electronically and on paper.

6.14(11) *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, attorney 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.

650—6.15(153,147,22) *Other groups of records.* This rule describes groups of records maintained by the agency other than record systems as defined in rule 6.1(153,147,22). 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(153,147,22). This information is stored electronically and on paper. The records listed may contain information about individuals.

6.15(1) Board agendas, minutes, news releases, statistical reports and compilations, newsletters, publications, correspondence, opinions, rulings, and other information intended for the public except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5 or which are otherwise confidential by law. These records may contain information about individuals, including board members and staff. This information is collected pursuant to Iowa Code section 21.3. This information is stored electronically and on paper.

6.15(2) Records of board rule-making proceedings. These records may contain information about individuals making written or oral comments on rules proposed by the board. This information is collected pursuant to Iowa Code section 17A.4. This information is stored electronically and on paper.

6.15(3) Board decisions, findings of fact, final orders, declaratory rulings, declaratory orders, and other statements of law or policy issued by the board in the performance of its function. This information is stored electronically or on paper.

6.15(4) Administrative records. This includes documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions.

6.15(5) Office manuals. Information in office manuals such as the procedures manual may be confidential under Iowa Code section 17A.2(7) “f” or other applicable provision of law.

650—6.16(153,147,22) Data processing system. The board does not currently have a data processing system which matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information on another record system.

650—6.17(153,147,22) Purpose and scope. This chapter implements Iowa Code section 22.11 by establishing board policies and procedures for the maintenance of records.

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 rules of another board or agency.
4. Apply to grantees, including local governments or subdivisions, 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 the records to the general public or to any subject individual or party to litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the board.

These rules are intended to implement Iowa Code section 22.11 and chapters 147, 153, and 272C and Iowa Code chapter 252J.

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