

CHAPTER 80
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
[Prior to 2/11/09, see 661—Ch 25]

PREAMBLE

Scope. These rules are to provide notice of how the department keeps records and what the procedures are for access by the public. Nothing in these rules affects the access of information by law enforcement agencies, agencies of government or persons authorized by chapter 692 of the Iowa Code to receive information.

661—80.1(17A,22) Definition. As used in this chapter:

“Agency” means the “department of public safety.”

[ARC 7562B, IAB 2/11/09, effective 4/1/09]

661—80.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

[ARC 7562B, IAB 2/11/09, effective 4/1/09]

661—80.3(17A,22) Requests for access to records.

80.3(1) Location of record. A request for access to a record should be directed to the office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Public Information Bureau, Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319.

80.3(2) Office hours. Open records shall be made available during customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays.

80.3(3) Request for access. A request for access to open records may be made in writing, by electronic mail, in person, or by telephone. The request shall identify the particular records sought by name or description in order to facilitate the location of the record. 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.

80.3(4) Response to requests. Access to an open record shall be provided promptly 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 shall also provide to the requester an estimate of any fees which will be assessed to cover the costs of complying with the request.

80.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

80.3(6) Copying. A reasonable number of copies of an open record may be made in the departmental office. If photocopy equipment is not available in the departmental office where an open record is kept, the custodian shall permit its examination in that office or a nearby location and shall arrange to have copies promptly made elsewhere. An electronic copy may be provided if mutually agreeable to the custodian and the requester.

80.3(7) Fees.

a. When charged. The agency 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 agency shall be prominently posted in agency offices. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in agency offices 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 fees. Fees may be charged for actual agency expenses in searching for and supervising the examination and copying of requested records. The custodian shall notify the requester of the hourly fees to be charged for searching for records and supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an agency employee who ordinarily would be appropriate and suitable to perform these search and supervisory functions.

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 payment of the full amount of any fees previously owed and of any estimated fees for the new request prior to processing any new request from the requester.

[ARC 7562B, IAB 2/11/09, effective 4/1/09]

661—80.4(17A,22) Procedures for access to confidential records. This rule contains the provisions governing public access to confidential records in addition to those specified for all records in rule 661—80.3(17A,22). These provisions do not apply to law enforcement agencies, agencies of government or persons authorized by Iowa Code chapter 692 or 100A to receive confidential information.

80.4(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.

80.4(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.

80.4(3) Reserved.

80.4(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.

80.4(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.

[ARC 7562B, IAB 2/11/09, effective 4/1/09]

661—80.5(17A,22) Requests for treatment of a record as a confidential record.

80.5(1) Any person who would be substantially or irreparably injured by disclosure of all or a part of a record to members of the public may file a request, as provided in this rule, for its treatment as a confidential record. Failure of a person to request confidential record treatment for all or part of a record does not preclude the agency from treating it as a confidential record.

80.5(2) A request for the treatment of a record as a confidential record shall be in writing and shall be filed with the custodian of that record. The request shall include an enumeration of the specific grounds upon which examination would not be in the public interest; the specific provisions of law that authorize confidential record treatment; and the name, address, and telephone number of the person authorized to respond to any agency action concerning the request. A person filing a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which confidential record treatment has been requested have been deleted. If the original record is being submitted to the agency by the person requesting confidentiality at the same time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are a confidential record. Requests for treatment of all or portions of a record as a confidential record for a limited time period shall also specify the precise period of time for which confidential record treatment is requested.

80.5(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 agency 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.

80.5(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.

80.5(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.

80.5(6) Request denied. If a request for confidential record treatment is denied, the requester may seek review or relief under Iowa Code section 22.8.

[ARC 7562B, IAB 2/11/09, effective 4/1/09]

661—80.6(17A,22) Procedure by which a subject may have additions, dissents, or objections entered into the record. Except as otherwise provided by law, the subject of a record shall have the right to have a written statement of additions, dissents, or objections entered into the record. The subject shall send the statement to the custodian of the record. The statement must be dated and signed by the subject, and shall include the current address and telephone number of the subject or the subject's representative.

EXCEPTION: This rule does not apply to criminal investigation, identification or intelligence files. Access to criminal history data shall be governed by Iowa Code section 692.5.

[ARC 7562B, IAB 2/11/09, effective 4/1/09]

661—80.7(17A,22) Consent to disclosure by the subject of a confidential record. The subject of a confidential record may consent to agency disclosure to a third party of that portion of the record concerning the subject. The consent 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 subject and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity.

EXCEPTION: This rule does not apply to criminal investigation, identification or intelligence files. Access to criminal history data shall be governed by Iowa Code section 692.5.

[ARC 7562B, IAB 2/11/09, effective 4/1/09]

661—80.8 Reserved.

661—80.9(17A,22) Disclosures without the consent of the subject.

80.9(1) Open records are routinely disclosed without the consent of the subject.

80.9(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 661—80.10(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.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

[ARC 7562B, IAB 2/11/09, effective 4/1/09]

661—80.10(17A,22) Routine use.

80.10(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.

80.10(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.

[ARC 7562B, IAB 2/11/09, effective 4/1/09]

661—80.11(17A,22) Records retention manual. The department’s “Records Retention Manual” contains the records management information required by Iowa Code chapter 22. The manual is available for examination and copying at the Public Information Bureau, Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319.

[ARC 7562B, IAB 2/11/09, effective 4/1/09]

661—80.12(17A,22) Data processing system. All departmental data processing systems that have common data elements can potentially match, collate or compare personally identifiable information.
[ARC 7562B, IAB 2/11/09, effective 4/1/09]

661—80.13(22) Confidential records. This rule describes the types of departmental information or records that are confidential, in addition to those listed in Iowa Code chapter 22. This rule is not exhaustive.

1. Investigative reports including laboratory reports. (Iowa Code sections 22.7, 622.11, 692.2)
2. Criminal histories. (Iowa Code sections 22.7, 622.11, 692.2)
3. Intelligence reports. (Iowa Code sections 22.7, 622.11, 692.2)
4. Domestic abuse reports. Information which individually identifies perpetrators or victims of domestic abuse. (Iowa Code sections 22.7, 236.9)
5. Radio communication log where it contains criminal history and intelligence information. (Iowa Code sections 22.7, 692.2)
6. Personal information in confidential personnel files including but not limited to evaluations, discipline, social security numbers, medical and psychological evaluations.
7. Complaint files, investigative files and similar information relating to private investigative agency licensees. (Iowa Code sections 22.7, 80A.17)
8. Records received from other agencies which would be confidential if created by the department. (Iowa Code sections 22.7, 692.2, 692.3)
9. Any report, manual, or other record which contains information concerning security procedures or emergency preparedness information related to the protection of employees of the department, employees of other agencies of state government, employees of other units of government, visitors to state government facilities or offices, other persons on premises controlled by any state or local government agency, or property owned by or under the control of the department, any other state agency, or any other unit of government, or information concerning security procedures or emergency preparedness information related to persons or property owned by or under the control of a private entity if that information was obtained by the department in relation to planning for emergencies or developing security procedures, or with an assurance that the information would be maintained as confidential.
[ARC 7562B, IAB 2/11/09, effective 4/1/09]

661—80.14(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 of the Iowa department of human services through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement of child support orders pursuant to Iowa Code chapter 252J or 598.
[ARC 7562B, IAB 2/11/09, effective 4/1/09]

661—80.15(22,80F) Release of official photographs of or personal information about employees.

80.15(1) An official photograph of or personal information about an employee of the department who is an officer as defined in Iowa Code section 80F.1 shall be released only if either of the following is true:

- a. The employee has signed a written release giving permission to release the photograph or personal information; or
- b. A request has been received to release the photograph or personal information pursuant to Iowa Code chapter 22.

80.15(2) A photograph of or personal information about any employee of the department shall not be released if its release could jeopardize an ongoing investigation or place the employee at risk.

80.15(3) An officer's personal information, including but not limited to the officer's home address, personal telephone number, personal electronic mail address, date of birth, social security number, and

driver's license number, shall be confidential and redacted prior to a record's release to the public by the department.

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These rules are intended to implement Iowa Code chapters 22 and 80F.

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