

CHAPTER 5
PUBLIC RECORDS AND
FAIR INFORMATION PRACTICES

The secretary of state 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.

721—5.1(17A,22) Definitions. As used in this chapter:

“*Agency.*” In lieu of the words “(official or body issuing these rules)”, insert “secretary of state”.

721—5.3(17A,22) Requests for access to records.

5.3(1) Location of record. In lieu of the words “(insert agency head)”, insert “secretary of state”. In lieu of the words “(insert agency name and address)”, insert “the Secretary of State, Statehouse, Des Moines, Iowa 50319”.

5.3(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., Monday through Friday, except for state holidays”.

5.3(7) Fees.

c. Supervisory fee. In lieu of the words “(specify time period)”, insert the words “one hour”. Delete the words “(An agency wishing to deal with search fees authorized by law should do so here.)”

721—5.6(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 State, Statehouse, Des Moines, Iowa 50319”.

721—5.9(17A,22) Disclosures without the consent of the subject.

5.9(1) Open records are routinely disclosed without the consent of the subject.

5.9(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 5.10(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.

721—5.10(17A,22) Routine use.

5.10(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).

5.10(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.

721—5.11(17A,22) Consensual disclosure of confidential records.

5.11(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 5.7(17A,22).

5.11(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.

721—5.12(17A,22) Release to subject.

5.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 5.6(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.

5.12(2) Where a record has multiple subjects with interests in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

721—5.13(17A,22) Availability of records.

5.13(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

5.13(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.
- (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. Agricultural reports defined as confidential reports in Iowa Code section 172C.14.

i. Any other records made confidential by law.

5.13(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 5.4(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 5.4(3).

721—5.14(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 5.1(17A,22). All records described in this rule are public records. 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 agency maintains no record systems in which 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:

5.14(1) Liens. The agency maintains lien records, pursuant to 2000 Iowa Acts, chapter 1149, sections 72 and 90; the Uniform Commercial Code; pursuant to Iowa Code section 570.1 as amended by 2000 Iowa Acts, chapter 1149, section 176, landlord's liens; pursuant to Iowa Code section 570A.4, agricultural supply dealer's liens; pursuant to Iowa Code section 571.3, thresher's or cornsheller's liens; pursuant to Iowa Code section 579A.2(2) as amended by 2001 Iowa Acts, House File 549, section 3, custom cattle feedlot liens; pursuant to Iowa Code section 579B.4(1) as amended by 2001 Iowa Acts, House File 549, section 3, commodity production contract liens; and pursuant to Iowa R.C.P. 260, levies on personalty. Personally identifiable information includes the name and address of the debtor and the secured party, and the time and date of filing of the lien or levy. The information is stored in a computer database, and is indexed by the name of the debtor.

5.14(2) Candidates for public office. The agency maintains records of candidates for public office, pursuant to Iowa Code sections 43.11, 43.18, 44.3, 44.4, and 45.3. Personally identifiable information includes the name, address, and political party affiliation of the candidate, and the name of the public office sought by the candidate. The information is stored in a computer database, and is indexed by the name of the candidate.

5.14(3) Donor and donee records. The agency maintains records of gifts made to certain public officials, pursuant to Executive Order number 31, and Iowa Code section 68B.11(2). Personally identifiable information includes the name of the donor or donee, the nature, amount, and date of gifts made to a donee in excess of \$15 in cumulative value in any calendar day, the title, agency or organization of the donor or donee, and the mailing address of a donor. The information is stored in a manual filing system, and indexed by the name of the donor or the donee.

5.14(4) County auditors. The agency maintains records of county auditors in the state of Iowa, pursuant to Iowa Code section 47.1. Personally identifiable information includes the name and address of the county auditor. The information is stored in a computer database, and is indexed by the name of the county auditor.

5.14(5) Substitute service of process. The agency maintains records of plaintiffs to litigation in which service of process is achieved pursuant to Iowa Code section 617.3, the “long-arm statute.” Personally identifiable information includes the name of the plaintiff and other information included in the document by the plaintiff. The information is stored in a manual filing system, and is indexed by the name of the plaintiff.

5.14(6) Commissions. The agency maintains records of commissions issued by the governor, pursuant to Iowa Code section 9.3. Personally identifiable information includes the name and address of the recipient of the commission. The information is stored in a manual filing system, and is indexed by the name of the recipient of the commission.

5.14(7) Patents and deeds. The agency maintains records of land patents and deeds to property, pursuant to Iowa Code chapter 10. Personally identifiable information includes the name of the recipient of the land patent or the conveyor of the deed, the county in which the land is located, and a legal description of the land. The information is stored in a manual filing system, and is indexed by the name of the recipient of the land patent or the conveyor of the deed.

5.14(8) Notary public records. The agency maintains records of notaries public commissioned pursuant to Iowa Code chapter 77. The records include the name, address, and county of residence of the notary public, the beginning and ending date of the commission, status as a new or renewal notary public, a certificate number, and an audit number. The information is stored in a computer database and on microfilm, and is indexed by the name of the notary public.

5.14(9) Transient merchants. The agency maintains records containing information about transient merchants, pursuant to Iowa Code chapter 9C. The records include the name and address of the merchant, and other information required by Iowa Code section 9C.3. The information is stored in manual files and indexed by the name of the transient merchant.

721—5.15(17A,22) 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 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 2.7(11).

721—5.16(17A,22) Other groups of records. This rule describes records maintained by the agency other than record systems as defined in rule 5.14(17A,22). These records are routinely available to the public except records maintained pursuant to Iowa Code chapter 172C. However, the agency’s files of these records may contain confidential information as discussed in rule 5.13(17A,22). The records may contain information about individuals.

Records are maintained regarding:

1. Corporations organized in Iowa or authorized to do business in Iowa pursuant to Iowa Code chapters 491, 496A, 496B, 496C, 504, and 504A.
2. Cooperative associations organized in Iowa or authorized to do business in Iowa pursuant to Iowa Code chapters 497, 498, 499, and 499A.
3. Limited partnerships organized in Iowa or authorized to do business in Iowa pursuant to Iowa Code chapter 487.
4. Farm operations subject to Iowa Code chapters 9H and 567.
5. Athlete agents registered pursuant to Iowa Code chapter 9A.
6. Out-of-state contractors pursuant to Iowa Code section 103A.24.
7. Postsecondary educational institutions pursuant to Iowa Code chapter 261B.
8. Organizations soliciting public donations pursuant to Iowa Code chapter 13C.

9. Agreements relating to the joint exercise of governmental powers filed pursuant to Iowa Code chapter 28E.

10. Files relating to administration of the election laws found in Iowa Code chapters 39 through 41, 43 through 55, 57 through 63, 66, 69, 75, 145A, 161A, 174, 260C, 273, 274, 275, 277, 278, 279, 296, 297, 298, 300, 303, 303B, 306C, 330, 331, 336, 347, 347B, 349, 357, 357B, 357C, 357D, 358, 359 through 362, 368, 372, 376, 384, 392, 394, 400, 420, 422A, 422B, 442, 456, 462, 602, 659, 720, 721, and 722.

11. Administrative records including documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions, and other documents associated with the management of the agency.

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