

CHAPTER 15
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

685—15.1(17A,22,263B) Definitions. As used in this chapter:

“*Agency*” means the office of state archaeologist (OSA).

“*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 agency 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, Iowa Code section 263B.10, 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.

“*Custodian*” means the state archaeologist or a person lawfully delegated authority by the state archaeologist to act for the agency 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.

“*Record system*” means any group of records under the control of the agency 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 9025B, IAB 8/25/10, effective 9/29/10]

685—15.2(17A,22,263B) Requests for access to records.

15.2(1) Location of record. A request for access to a record should be directed to the state archaeologist at OSA, 700 South Clinton Street Building, University of Iowa, Iowa City, Iowa 52242; or telephone (319)384-0751.

15.2(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, except legal or university holidays.

15.2(3) Request for access. Requests for access to open records may be made in writing or in person. The office may also accommodate telephone requests where appropriate. Requests 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.

15.2(4) Response to requests. Access to an open record shall be provided promptly, 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 22.7 or 22.8. Upon request, 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. 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 section 22.7 or 22.8, 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 685—15.3(17A,22,263B) and other applicable provisions of law.

15.2(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.

15.2(6) Copying. A reasonable number of copies of an open record may be made in the agency’s office. If photocopy equipment is not available in the agency 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.

15.2(7) Fees.

a. OSA may charge the photocopy fee set forth in its “Fees for Services” document, which reflects the actual cost of such photocopies. The current “Fees for Services” document is available from OSA and posted on the OSA Web site.

b. In addition to photocopy charges, an hourly fee may be charged for actual OSA expenses in supervising the examination and copying of requested records. OSA shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly compensation of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

c. 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.

[ARC 9025B, IAB 8/25/10, effective 9/29/10]

685—15.3(17A,22,263B) 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 and 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 on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person’s attorney.

[ARC 9025B, IAB 8/25/10, effective 9/29/10]

685—15.4(17A,22,263B) Disclosures without the consent of the subject.

15.4(1) Open records are routinely disclosed without the consent of the subject.

15.4(2) To the extent allowed by law, disclosure of confidential records or exempt records may occur without the consent of the subject. Without limiting the custodian’s discretion to disclose records pursuant to Iowa Code section 22.7 and applicable law, the following are nonexhaustive examples of instances where disclosure, if lawful, can generally occur without notice to the subject:

a. For a routine use as defined in rule 685—15.5(17A,22,263B) 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 the 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.

[ARC 9025B, IAB 8/25/10, effective 9/29/10]

685—15.5(17A,22,263B) Routine use.

15.5(1) Definition. “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.

15.5(2) Examples. 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 or exempt 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 agency or officer which the office is advising or representing in the matter in question or 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 9025B, IAB 8/25/10, effective 9/29/10]

685—15.6(17A,22,263B) Consensual disclosure of confidential records.

15.6(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 685—15.3(17A,22,263B).

15.6(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.

[ARC 9025B, IAB 8/25/10, effective 9/29/10]

685—15.7(17A,22,263B) Release to subject.

15.7(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 685—15.3(17A,22,263B). 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 records 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.

15.7(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.

[ARC 9025B, IAB 8/25/10, effective 9/29/10]

685—15.8(17A,22,263B) Availability of records.

15.8(1) General. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

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

b. Records which constitute attorney work product or 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. Civ. P. 1.503(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.

c. Records relating to the nature and location of archaeological resources or sites, which are exempt from disclosure pursuant to Iowa Code section 22.7(20) and Iowa Code section 263B.10.

d. Personal information in confidential personnel records pursuant to Iowa Code section 22.7(11).

e. Any other records made confidential by law.

[ARC 9025B, IAB 8/25/10, effective 9/29/10]

685—15.9(17A,22,263B) 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 685—15.1(17A,22,263B). For each record system, this rule describes the legal authority for the collection of that information and 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 OSA are personnel and employment management information systems, the records for which are collected pursuant to the authority of Iowa Code chapter 263B. Storage is in paper form, though certain employment information may be incorporated into electronic records which could then be matched, collated, or compared.

[ARC 9025B, IAB 8/25/10, effective 9/29/10]

685—15.10(17A,22,263B) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 685—15.1(17A,22,263B). These records are routinely available to the public. However, the agency's files of these records may contain confidential information. In addition, some records may contain information about individuals. All records are stored both on paper and in automated data processing systems unless otherwise noted.

15.10(1) Rule making. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

15.10(2) Publications. News releases, annual reports, project reports, and agency newsletters are available through OSA's Web site or from the agency. Any news releases, annual or project reports, or newsletters may contain information about individuals, including agency staff members.

15.10(3) Statistical reports. Periodic reports for various OSA programs may be available from OSA.

15.10(4) Grants/contracts. OSA may have communications with prospective granting agencies or clients about grants or contracts.

[ARC 9025B, IAB 8/25/10, effective 9/29/10]

These rules are intended to implement Iowa Code chapter 22.

[Filed ARC 9025B (Notice ARC 8870B, IAB 6/30/10), IAB 8/25/10, effective 9/29/10]