

CHAPTER 4
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

761—4.1(22,304) General provisions.

4.1(1) Scope of chapter.

a. This chapter describes the provisions governing public access to records that are owned by or in the physical possession of the department. However, access to personnel and payroll records may also be subject to the rules of the department of administrative services.

b. This chapter does not affect the policy of the department to respond, without charge, to routine oral or written inquiries that do not involve the furnishing of records.

c. This chapter does not make available records compiled by the department in reasonable anticipation of court litigation or formal administrative proceedings. The availability of these records to the public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the department.

4.1(2) Custodian. The custodian of a record is the person who heads the departmental office responsible for that record. The department's Records Management Manual identifies the offices that are responsible for particular records.

a. As used in this chapter, the term "custodian" includes the custodian's superiors and the custodian's designees.

b. The custodian's designees may include but are not limited to the records center and the department's general counsel.

c. The custodian of a record is authorized to provide or deny access to that record in accordance with the provisions of this chapter. However, the custodian's authority to provide access to a confidential record is limited to the persons listed in subrule 4.4(2).

4.1(3) Address of records center. The address of the department's records center is: Records Center, Office of Document Services, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

4.1(4) Records Management Manual.

a. The department's Records Management Manual contains the records management information required by Iowa Code chapter 304.

b. Chapter III of the manual contains the descriptive information on records that is required by Iowa Code section 22.11. Chapter III, as revised through 2001, is made a part of these rules.

c. The manual is available for examination and copying at the department's records center and at various other departmental offices located throughout the state. A copy of the manual may be obtained at cost from the records center.

4.1(5) Availability of open records. Open records of the department are available to the public for examination and copying unless otherwise provided by rule or statute.

4.1(6) Data processing matching. All departmental data processing systems that have common data elements can potentially match, collate and compare personally identifiable information.

4.1(7) Warranty. No warranty of the accuracy or completeness of a record is made.

4.1(8) Existing records. A request for access shall apply only to records that exist at the times the request is made and access is provided. The department is not required to create, compile or procure a record solely for the purpose of making it available. EXCEPTIONS: See Iowa Code section 22.3A and subrule 4.4(5).

4.1(9) Definitions. As used in this chapter:

"Confidential record" means a record that 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 department 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 or another provision of law, but that may be disclosed upon order of the court, the custodian of the record, or by another person duly authorized

to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“*Open record*” means a record other than a confidential record.

“*Personally identifiable information*” means information about an individual in a record that identifies the individual and is retrievable by a unique personal identifier associated with the individual.

“*Public*” means those persons who are not officials, employees or agents of the department.

“*Record*” means the whole or a part of a “public record” as defined in Iowa Code section 22.1 that is owned by or in the physical possession of the department.

“*Requester*” means a member of the public.

This rule is intended to implement Iowa Code chapter 22 and section 304.17.

[ARC 7909B, IAB 7/1/09, effective 7/1/09]

761—4.2(22) Statement of policy and purpose. It is the policy of the department that free and open examination of public records is generally in the public interest. The purpose of these rules is to facilitate broad public access to open records and sound determinations with respect to the handling of confidential records.

This rule is intended to implement Iowa Code chapter 22.

761—4.3(22) Access to records.

4.3(1) Submission of request for access.

a. A request for access to a record shall be submitted to the custodian of the record. If the requester does not know the identity of the custodian, the request may be submitted to the records center at the address in subrule 4.1(3). The records center will forward the request to the custodian.

b. Notwithstanding paragraph “*a*” of this subrule, any request that may be related to a potential or an actual tort claim or other litigation shall be submitted to the following address: General Counsel, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. If the custodian receives a request of this nature, the custodian shall forward the request to the department’s general counsel.

c. If a request for access is misdirected, department personnel will forward the request to the custodian.

4.3(2) Office hours. Open records are available during customary office hours, which are 8 a.m. to 4:30 p.m., excluding Saturdays, Sundays, and legal holidays.

4.3(3) Form of request. A request for access to a record shall reasonably describe the record requested. A request for access to an open record may be made orally or in writing. A requester shall not be required to give reasons for requesting an open record.

4.3(4) Response to request. The custodian shall provide access to an open record promptly upon request. However, if the size or nature of the request makes prompt access infeasible, the custodian shall fill the request as soon as feasible and give the requester an estimate of when the record will be available.

4.3(5) Delay. Access to a record may be delayed for one of the purposes authorized by Iowa Code subsection 22.8(4) or 22.10(4). The custodian shall inform the requester of the reason for the delay and the estimated length of the delay.

4.3(6) Security of records. No person may, without permission from the custodian, search agency files or remove any record from the place where it is made available. The custodian shall supervise the examination and copying of records and protect the records from damage and disorganization. Original paper records shall be released from department custody only upon court order. At least one certified copy shall be retained in the file if the original record is released.

4.3(7) Copies. A photocopy of an open record may be made on department photocopiers. If a photocopier is not available in the office where an open record is kept, the custodian shall permit its examination in that office and, if requested, arrange to have a copy made elsewhere.

4.3(8) Fees. The department may charge fees for records as authorized by Iowa Code section 22.3 or another provision of law. Under Iowa Code section 22.3, the fee for the copying service shall not exceed the cost of providing the service.

This rule is intended to implement Iowa Code sections 22.2, 22.3, 22.4, 22.8, 22.10, and 22.11.

761—4.4(22) Access to confidential records. The following provisions are in addition to those specified in rule 761—4.3(22) and are minimum requirements. A statute or another department rule may impose additional requirements for access to certain classes of confidential records.

4.4(1) Procedure.

a. Form of request. The custodian shall ensure that there is sufficient information to provide reasonable assurance that access to a confidential record may be granted. Therefore, the custodian may require the requester to:

- (1) Submit the request in writing.
- (2) Provide proof of identity and authority to secure access to the record.
- (3) Sign a certified statement or affidavit listing the specific reasons justifying access to the record and provide any proof necessary to establish relevant facts.

b. Response to request. The custodian shall notify the requester of approval or denial of the request for access. If the requester indicates to the custodian that a written notice is desired if the request for access is denied, the custodian shall provide such notice promptly. The notice shall be signed by the custodian and include:

- (1) The name and title or position of the custodian, and
- (2) A brief statement of the grounds for denial, including a citation to the applicable statute or other provision of law.

c. Reconsideration of denial. A requester whose request is denied by the custodian may apply to the director of transportation for reconsideration of the request.

4.4(2) Release of confidential records by the custodian. The custodian may release a confidential record or a portion of it:

- a.* To the legislative services agency pursuant to Iowa Code section 2A.3.
- b.* To the citizens' aide pursuant to Iowa Code section 2C.9.
- c.* To other governmental officials and employees only as needed to discharge their duties.
- d.* To those persons as permitted or required by rule 761—4.9(22).
- e.* To persons authorized by the subject of the record in accordance with rule 761—4.5(22).

4.4(3) Release of confidential records by the director.

a. The director of transportation may release a confidential record or a portion of it to a person not covered in subrule 4.4(2) if the release:

- (1) Is permitted by statute, rule or another provision of law, and
- (2) Is not inconsistent with the stated or implied purpose of the law which establishes or authorizes confidentiality.

b. Before the director releases a record to a person not covered in subrule 4.4(2), the director may notify the subject of the record of the impending release and may give the subject a reasonable amount of time to seek an injunction.

4.4(4) Mixed record. A confidential record may, due to its nature or the way it is compiled or stored, contain a mixture of confidential and nonconfidential information. The department shall not refuse to release the nonconfidential information simply because the record is compiled or stored in this fashion.

4.4(5) Information released. If a person is provided access to less than an entire record, the department shall take measures to ensure that the person is furnished only the information that is to be released. This may be done by providing to the person either an extraction of the information to be released, or a copy of the record from which the information not to be released has been deleted.

This rule is intended to implement Iowa Code section 22.11.

761—4.5(22) Consent to release a confidential record to a third party. To the extent permitted by law, the subject of a confidential record may consent to its release to a third party. The consent must be in writing and must identify the particular record that may be disclosed and the particular person or class of persons to whom the record may be disclosed. The subject of the record may be required to provide proof of identity. Appearance of counsel before the agency on behalf of a person who is the subject of

a confidential record may be deemed to constitute consent for the department to disclose records about that person to the person's counsel.

This rule is intended to implement Iowa Code section 22.11.

761—4.6(22) Requests for confidential treatment.

4.6(1) A person may request that all or a portion of a record be confidential. The request must be submitted in writing to the custodian and:

- a. Identify the information for which confidential treatment is sought.
- b. Cite the legal basis that justifies confidential treatment.
- c. Give the reasons why the person would be aggrieved or adversely affected by disclosure of the information. The person may be required to provide any proof necessary to support these reasons.

4.6(2) The custodian shall notify the requester in writing of the granting or denial of the request and, if denied, the reasons therefor.

4.6(3) If the request is denied, the requester may apply to the director of transportation for reconsideration of the request.

This rule is intended to implement Iowa Code section 22.11.

761—4.7(22) Procedure by which additions, dissents, or objections may be entered into records. Except as otherwise provided by law, the person who is the subject of a record may have a written statement of additions, dissents or objections entered into that record. The statement shall be filed with the custodian. The statement must be dated and signed by the person who is the subject of the record and include the person's current address and telephone number. This rule does not authorize the person who is the subject of the record to alter the original record or to expand the official record of any agency proceeding.

This rule is intended to implement Iowa Code section 22.11.

761—4.8(22) Notice to suppliers of information. When the department requests a person to supply information about that person, the department shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these or other rules of the department, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, orally, or by other appropriate means.

This rule is intended to implement Iowa Code section 22.11.

761—4.9(22) Confidential records. This rule describes the types of departmental information or records that are confidential. This rule is not exhaustive. A citation of the legal authority for confidentiality follows each description.

As related to particular types of confidential information or records, this rule also includes exceptions to confidentiality, the rights of certain persons to have access, and permissible disclosures.

Descriptions:

4.9(1) Hospital, medical and professional counselor records of the condition, diagnosis, care or treatment of present or former patients or counselees. (Iowa Code section 22.7)

- a. This category of records includes but is not limited to hospital, medical and professional counselor records of present or former departmental employees.
- b. Notwithstanding this subrule, State of Iowa Employers Work Injury Report forms are not confidential.
- c. The subject of a hospital, medical or professional counselor record has the right of access to it.

4.9(2) Trade secrets which are recognized and protected by law. (Iowa Code section 22.7)

- a. The person who furnished the trade secret information has the right of access to this information.
- b. Reserved.

4.9(3) Records which constitute attorney work product, attorney-client communications, or that are otherwise privileged. (Attorney work product is confidential under Iowa Code sections 22.7, 622.10 and 622.11, Iowa R. C. P. 1.503(3), 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.)

a. This category of records includes but is not limited to:

- (1) Investigations conducted in anticipation of tort claims or other litigation.
- (2) Records directly related to threatened litigation over title.

b. Reserved.

4.9(4) Peace officers' investigative reports, except where disclosure is required or authorized by the Iowa Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident are not confidential except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or would pose a clear and present danger to the safety of an individual. (Iowa Code section 22.7)

4.9(5) Reports to the department which, if released, would give advantage to competitors and serve no public purpose. (Iowa Code section 22.7)

a. Examples of records which could in the proper circumstances be determined to be within this category include but are not limited to:

(1) Financial reports filed by contractors for departmental use in determining their eligibility to bid on projects advertised for letting. This includes financial information from these reports that is stored on computer.

(2) Documents submitted by firms for departmental use in certifying their eligibility as disadvantaged business enterprises.

(3) Prequalification forms filed with the department under rule 761—20.8(307). This includes the selection committee's working papers; however, the final selection committee report is not confidential once it has been approved by the appropriate division director. Selection committee activities may also fall under subrule 4.9(20).

(4) Financial reports filed with the department for the purpose of seeking certificates of self-insurance under Iowa Code section 321A.34.

(5) Copies of agreements between sign owners and landowners filed with the department in support of the issuance of outdoor advertising permits.

(6) Copies of private contracts between railroads and shippers or other private parties.

(7) Barge terminal surveys which ask for shipping and financial information from barge companies.

b. The subject of the record has the right of access to it.

4.9(6) Criminal identification files, except for the records of current and prior arrests. (Iowa Code section 22.7)

a. The custodian may disseminate criminal identification data to a peace officer, a criminal justice agency, or a state or federal regulatory agency if the custodian is satisfied that the need to know and the intended use are reasonable.

b. The custodian shall also comply with Iowa Code chapter 692.

4.9(7) Personal information in confidential personnel records of present or former departmental employees. (Iowa Code section 22.7)

a. Submission by an employee of an employment application form shall constitute authorization for the release of a copy of the employee's complete personnel records to the selecting authority.

b. Confidential personnel information relating to a particular program shall be released to that agency or company which is administering the program.

c. The subject of a personnel record has the right of access to it.

4.9(8) Communications not required by law, rule or procedure that are made to the department by identified persons outside of government, to the extent that it could reasonably be believed that those persons would be discouraged from making the communications if they were made available for general public examination. (Iowa Code section 22.7)

a. This category of records includes but is not limited to exit interviews for voluntary terminations.

b. Exceptions to confidentiality:

- (1) A communication is not confidential if its author consents to its release.
- (2) Information in a communication that can be disclosed without identifying its author or enabling others to ascertain that identity is not confidential.
- (3) Information in a communication that indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act is not confidential unless disclosure would plainly and seriously jeopardize a continuing investigation or would pose a clear and present danger to the safety of any person.

c. The author of a communication has the right of access to it.

4.9(9) Examinations, including but not limited to cognitive and psychological examinations for law enforcement officer candidates administered by or on behalf of a government body, to the extent that their disclosure could reasonably be believed by the lawful custodian to interfere with the accomplishment of the objectives for which they are administered. (Iowa Code section 22.7)

4.9(10) Information concerning the nature and location of an archaeological resource or site if, in the opinion of the state archaeologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. (Iowa Code section 22.7)

4.9(11) Information concerning the nature and location of an ecologically sensitive resource or site if, in the opinion of the director of the department of natural resources after consultation with the state ecologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. (Iowa Code section 22.7)

4.9(12) Those portions of the department's staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by departmental 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 enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons who are in an adverse position to the department. (Iowa Code sections 17A.2 and 17A.3)

4.9(13) The detailed minutes and tape recording of a closed session of the commission. However, if the closed session regards a real estate purchase, the minutes and tape recording shall be available for public inspection when the transaction discussed is completed. (Iowa Code section 21.5)

4.9(14) Vehicle accident reports submitted to the department by drivers and peace officers. (Iowa Code sections 321.266 and 321.271)

a. However, access shall be granted to those persons authorized by Iowa Code section 321.271.

b. Rescinded IAB 1/8/03, effective 2/12/03.

4.9(15) All information filed with the court for the purpose of securing a warrant for an arrest until the arrest has been made and the warrant has been returned. (Iowa Code section 804.29)

4.9(16) All information filed with the court for the purpose of securing a warrant for a search until the warrant has been executed and returned. (Iowa Code section 808.13)

4.9(17) Information obtained by the department from the examining of reports or records required to be filed or kept under the provisions of Iowa Code chapter 452A, except where disclosure is authorized by chapter 452A. (Iowa Code section 452A.63)

4.9(18) Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

4.9(19) Except as required by Iowa Code section 6B.45, the parcel file for a right-of-way acquisition until title has passed to the state and all contract and relocation claims have been paid. (Iowa Code section 22.7)

4.9(20) Those records which, if disclosed, would diminish competition or would give an improper advantage to persons who are in an adverse position to the department. These records shall be kept confidential until the transaction to which they relate is consummated. However, if disclosure would reveal information which would hinder future competition, the records shall be kept confidential. (Iowa Code sections 17A.2, 17A.3, 22.7 and 313.10, Iowa Code chapter 553, and 761—Chapter 20)

a. Examples of records which could, in the proper circumstances, be determined to be within this category include but are not limited to:

- (1) Detailed estimates of the cost of a proposed contract.
- (2) Economic analyses for determining pavement types.
- (3) Negotiations for a proposed contract.
- (4) Methodology for determining unfair bidding practices or bid rigging.
- (5) Price quotations solicited.
- (6) The value of points assigned to a bid rating formula prior to the time set for public opening of bids.

(7) Laboratory testing reports of suppliers' products. These may also be trade secrets. The subject of the report has the right of access to it.

b. Reserved.

4.9(21) Income tax forms or rental, income or expense statements furnished by relocatees as documentation for relocation assistance payments. (Iowa Code sections 22.7 and 422.20, 5 U.S.C. §§ 552 and 552a)

a. The subject of the form or statement has the right of access to it.

b. Reserved.

4.9(22) Audit reviews for determining EEO contract compliance. (Iowa Code section 22.7, 5 U.S.C. §§ 552 and 552a)

a. The subject of the audit review has the right of access to it.

b. Reserved.

4.9(23) Tax records made available to the department. (Iowa Code section 422.20)

4.9(24) Personal information in motor vehicle records. (Iowa Code section 321.11 and 18 U.S.C. § 2721 et seq.)

a. This information may be disclosed only as provided in Iowa Code section 321.11, 18 U.S.C. § 2721 et seq., and 761—Chapters 415, 610 and 611.

b. The subject of the personal information has the right of access to the information.

4.9(25) A report received by the department from a physician licensed under Iowa Code chapter 148, an advanced registered nurse practitioner licensed under Iowa Code chapter 152 and registered with the board of nursing, a physician assistant licensed under Iowa Code chapter 148C or an optometrist licensed under Iowa Code chapter 154 regarding a person who has been diagnosed as having a physical or mental condition which would render the person physically or mentally incompetent to operate a motor vehicle in a safe manner. (Iowa Code section 321.186)

4.9(26) Certain records regarding undercover driver's licenses issued to peace officers, as specified in 761—Chapter 625. (Iowa Code sections 22.7 and 321.189A)

a. The subject of the record and the head of the law enforcement agency employing the subject have the right of access to the record.

b. Reserved.

4.9(27) Records related to confidential plates issued for government vehicles. (Iowa Code section 321.19)

a. The head of the agency to which the vehicle is assigned has the right of access to the record.

b. Reserved.

4.9(28) Data processing software developed by the department. (Iowa Code section 22.7)

a. The custodian may provide, restrict or prohibit access to this software in accordance with Iowa Code section 22.3A.

b. Reserved.

4.9(29) Records containing information that would disclose, or might lead to the disclosure of, private keys used in a digital signature or other similar technologies as provided in Iowa Code chapter 554D, and records which, if disclosed, might jeopardize the security of an electronic transaction pursuant to Iowa Code chapter 554D. (Iowa Code section 22.7)

4.9(30) The portion of a record request that contains an Internet protocol number which identifies the computer from which a person requests a record. However, such record may be released with the express written consent of the requester. (Iowa Code section 22.7)

4.9(31) Certified transcripts of labor payrolls (also known as certified payroll records) filed by contractors for federal-aid construction contracts, in accordance with the following paragraphs. (Iowa Code section 22.7, 5 U.S.C. §§ 552 and 552a, 42 U.S.C. § 405)

a. The social security numbers in a certified payroll record are confidential. The record itself may be confidential if its release would give advantage to competitors and serve no public purpose.

b. The prime contractor and subcontractor, if applicable, that filed the record have the right of access to it.

c. Certified payroll records shall be released to the U.S. Department of Labor and Federal Highway Administration during investigations.

d. The custodian may release a certified payroll record with social security numbers withheld to representatives of the Iowa Labor Management Work Preservation Fund.

e. The custodian may release a certified payroll record with social security numbers withheld to persons outside the department other than the persons listed in paragraphs “*b*” to “*d*” according to the following procedure:

(1) The request for the record must be in writing.

(2) The custodian shall send a copy of the request by registered mail to the prime contractor. If the request is for subcontractor information, the custodian shall send copies of the request to both the subcontractor and prime contractor.

(3) The requested record shall not be released until 14 calendar days have expired from receipt of the request by the contractor(s). This gives the contractor(s) an opportunity to seek an injunction.

4.9(32) Information concerning an open or pending railroad accident investigation conducted on behalf of or in conjunction with the Federal Railroad Administration or National Transportation Safety Board to the extent necessary to prevent denial of funds, services or essential information from the United States government. (Iowa Code section 22.9)

4.9(33) All other information or records that by law are or may be confidential, with the following exceptions:

a. Records of the departmental library.

b. Reserved.

This rule is intended to implement Iowa Code chapters 22, 553 and 692; Iowa Code sections 6B.45, 17A.2, 17A.3, 21.5, 72.3, 313.10, 321.11, 321.19, 321.186, 321.189A, 321.266, 321.271, 422.20, 452A.63, 602.10112, 622.10, 622.11, 804.29 and 808.13; 5 U.S.C. §§ 552 and 552a; and 18 U.S.C. § 2721 et seq.

[ARC 0661C, IAB 4/3/13, effective 5/8/13]

761—4.10(22) Release of confidential records. Rescinded IAB 1/8/03, effective 2/12/03.

[Filed 4/27/88, Notice 2/24/88—published 5/18/88, effective 6/22/88]

[Filed 11/3/88, Notice 9/21/88—published 11/30/88, effective 1/4/89]

[Filed 11/1/89, Notice 9/20/89—published 11/29/89, effective 1/3/90]

[Filed 1/15/92, Notice 12/11/91—published 2/5/92, effective 3/11/92]

[Filed 12/12/02, Notice 10/16/02—published 1/8/03, effective 2/12/03]

[Filed Emergency ARC 7909B, IAB 7/1/09, effective 7/1/09]

[Filed ARC 0661C (Notice ARC 0571C, IAB 1/23/13), IAB 4/3/13, effective 5/8/13]