

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[Prior to 8/21/91, see Public Defense Department(650) ch 2]

The military division of the public defense department 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 Administrative Code.

611—2.1(17A,22) Definitions. As used in this chapter:

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

“*Custodian.*” Delete “agency” and insert “adjutant general”.

“*Federal records*” means all records, documents, tape, or other information, stored or preserved in any medium, the maintenance, use, or disclosure of which is governed by federal government law or regulation.

“*Records*” or “*state records*” means all or part of a “public record” as defined in Iowa Code section 22.1 but does not include federal records as here defined.

611—2.3(17A,22) Requests for access to records.

2.3(1) Location of record. In lieu of the words “(insert agency head)”, insert “adjutant general”. In lieu of the words “(insert agency name and address)”, insert “Adjutant General, Military Division, Camp Dodge, 7700 N.W. Beaver Drive, Johnston, Iowa 50131-1902”.

2.3(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 holidays”.

2.3(7) Fees.

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

611—2.9(17A,22) Disclosures without the consent of the subject.

2.9(1) Open records are routinely disclosed without the consent of the subject.

2.9(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 2.10(17A,22) or in the 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.

611—2.10(17A,22) Routine use.

2.10(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.

2.10(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 office 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.

611—2.11(17A,22) Consensual disclosure of confidential record.

2.11(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 2.7(17A,22).

2.11(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.

611—2.12(17A,22) Release to subject.

2.12(1) The subject of a confidential record may file a written request to review confidential records about that person, as provided in rule 2.6(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.

2.12(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.

611—2.13(17A,22) Availability of records.

2.13(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

2.13(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 order, 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; 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)

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. Any other records made confidential by law.

2.13(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 2.4(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 2.4(3).

611—2.14(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 2.1(17A,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:

2.14(1) Quartermaster supply records prepared under the authority of Iowa Code sections 29A.19 and 17.30. Request for examination of these records which are retrievable by personal identifier will be directed to the Office of the State Quartermaster, Camp Dodge. Records are maintained on AGO Form 1-5 for hard copy and computer generated files.

2.14(2) Purchase and disposition of real property records, prepared under the authority of Iowa Code chapter 29A.57. Records are available from the State Quartermaster, Warehouse #3, Camp Dodge. Real estate records are available in hard copy format.

2.14(3) Armory board minutes including supporting documentation are prepared under the authority of Iowa Code section 29A.57. Records are available from the State Quartermaster, Warehouse #3, Camp Dodge. Records are maintained in hard copy format.

2.14(4) Armory lease records including supporting documentation are prepared under the authority of Iowa Code section 29A.57. Records are available from the State Quartermaster, Warehouse #3, Camp Dodge. Records are maintained in hard copy format.

2.14(5) Headquarters allowance and per capita allowance records and documentation for expenditures made from these accounts are prepared under the authority of Iowa Code sections 29A.33 and 29A.57(8). Records are available from the State Quartermaster, Warehouse #3, Camp Dodge. Records are maintained in hard copy format.

2.14(6) State contracting files prepared under the authority of Iowa Code section 72.1 which include personally identifiable information in the form of bidders lists, requests for quotation, professional contracts, vendors lists, wage rates, purchase orders, claim orders, and project books. Sealed bids become public information once the bid opening has been completed. The information is maintained in hard copy and may be obtained from the Facilities Office, Camp Dodge.

2.14(7) Personnel files. The agency maintains files containing information about state 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).

611—2.15(17A,22) Federal records. Pursuant to Iowa Code section 22.9, the military division finds that maintenance, use or disclosure of federal records described in this subsection, except as allowed by federal law and regulation, would result in denial to the agency of United States government funds, services and essential information that would otherwise definitely be available and have in the past been available to the agency. Iowa Code section 29A.5 provides that the Iowa National Guard shall be subject to the provisions of federal laws and regulations. Applicable federal laws and regulations include: 32 U.S.C. 105 (providing that Army National Guard records shall be kept in accordance with Title 32 of the United States Code), 32 U.S.C. 108 (providing that federal funds may be barred from a state national guard where compliance with Title 32 is not maintained), 5 U.S.C. 552 stating the manner in which federal records shall be made available to the public, and Air Force regulation 12-35 (June 3, 1985), Army Regulation 340-21 (July 5, 1985), National Guard Regulation 340-17 and Air National Guard Regulation 12-30 (all of which relate to maintenance and public availability of federal records). Copies of the regulations may be obtained at the cost of reproduction from the office of the Adjutant General, Camp Dodge, 7700 Northwest Beaver Drive, Johnston, Iowa 50131-1902.

2.15(1) The military division maintains the following categories of federal records, the maintenance of which is governed by federal law and regulation:

- a.* Personnel records. This category contains biographical, medical, and career development data on civilian and military personnel who are employed by the federal government.
- b.* Fiscal records. This category contains the record of service for pay, allowances, and retirement on civilian and military personnel who are employed by the federal government. It further includes budget and financial data required for audit purposes.
- c.* Training records. This category contains the training activities, accomplishments, and objectives of units, and personnel civilian and military who are employed by the federal government.
- d.* Legal files. This category contains legal assistance records, claims and litigation against the United States, contracts review, and attorney work product.
- e.* Inspector general files. This category contains records of evaluation of units, personnel assistance, and recommendations of the office of the inspector general.
- f.* Operations records. This category contains information on the movement of personnel and equipment to meet the mission requirements of the Army and Air Force.
- g.* Equipment maintenance records. This category contains the functional or repair status of military equipment maintained by the Army and Air National Guard.
- h.* Procurement record. This category contains a history of acquisition goods and services by the United States Property and Fiscal Office at Camp Dodge.
- i.* Equipment inventories. This category contains a record of property accounts for all federal equipment issued to the Iowa Air or Army National Guard.
- j.* Publications library. This category contains federal publications, regulations, directives and pamphlets which provide procedural guidance for the operations and activities of the Iowa National Guard.

The federal records described in paragraphs “a” to “e” above, contain personally identifiable information compiled under the authority of Iowa Code chapter 29A and Title 32 United States Code, Section 105, and implementing regulations. A more comprehensive description of the above noted federal records is contained in Air Force Regulation 12-50, “Disposition of Air Force Records,” and Department of the Army regulations 340-18, “The Army Functional File System.”

611—2.16(17A,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems defined in rule 2.1(17A,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 2.13(17A,22). In addition, the records may contain information about individuals.

2.16(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.

2.16(2) Publications. News releases, literature, reports, newsletters from various military associations or from the federal government are available from the public affairs officer, military division. Agency news releases, project reports and newsletters may contain information about individuals, including agency staff or members of agency committees. This information is not retrieved by individual identifier and is not currently stored on an automated data processing system.

2.16(3) All other records that are not exempted from disclosure by law.

611—2.17(17A,22) Data processing systems. Data processing systems used by this agency do not permit the comparison of personally identifiable information in one record system with personally identifiable information in another system.

611—2.18(17A,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about the individuals by that person's name or other personal identifier.

2. Make available to the general public records or federal 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 or federal records in possession of the agency which are governed by regulations of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general 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 agency.

These rules are intended to implement Iowa Code chapter 22 and section 29A.12.

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