

CHAPTER 9
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[Prior to 1/29/97 see Industrial Services Division[343]]
[Prior to 7/29/98 see Industrial Services Division[873]Ch 9]

The workers' compensation division of the workforce development 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 Iowa Administrative Code.

876—9.1(17A,22,85-87) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "the division of workers' compensation of the department of workforce development".

"Open record" means a record other than a confidential record, including but not limited to the record of declaratory rulings, declaratory orders, contested case proceedings, decisions, orders, rulings, settlements, and opinions of the agency.

"Person" means an individual, corporation, government or governmental subdivision or agency, business, trust, estate, partnership or association, or any other legal entity.

"Personally identifiable information." In lieu of the word "individual", insert the word "person".

"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 a person, number, symbol, or other unique retriever assigned to a person and all records that are not retrievable by a personal identifier.

"Subject" means that person identified in a record.

876—9.3(17A,22,85-87) Requests for access to records.

9.3(1) Location of record. In lieu of the words "(insert agency head)", insert "commissioner". Also, in lieu of the words "(insert agency name and address)", insert "Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319".

9.3(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 "which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays".

9.3(7) Fees.

c. Search and supervisory fee. An hourly fee may be charged for actual agency expenses in searching for and supervising the examination and copying of the requested records if the time required for each of these services exceeds one-quarter hour. The fee shall be based upon the pay scale of the employee involved and other actual costs incurred. The custodian shall prominently post in the agency offices the hourly fees to be charged.

876—9.6(17A,22,85-87) Procedure by which additions, dissents, or objections may be entered into certain records. Insert immediately following ". . . official record of any agency proceeding." the following sentence: "Any additions, dissents, or objections entered into the record shall not be considered evidence in a contested case proceeding." In lieu of the words "(designate office)", insert "the Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319".

876—9.8(17A,22,85-87) Notice to suppliers of information.

Insert a new paragraph as follows:

"Information provided under this rule may constitute an open record. The information supplied will be used to administer Iowa Code chapters 85 to 87 and this agency's rules. The information may be provided to parties to contested case proceedings and their representatives, employers, employees, insurance carriers, federal, state, and local agencies, and other persons having a legitimate interest in the information. All of the information requested is required to be supplied unless the request specifies otherwise. Failure to provide the information requested may result in the sanctions provided in Iowa Code chapters 85 to 87 and this agency's rules. See 876—Chapter 3 for forms used by this agency."

876—9.9(17A,22,85-87) Disclosure without the consent of the subject.

9.9(1) Open records are routinely disclosed without the consent of the subject.

9.9(2) If the agency is prohibited from disclosing part of a document from inspection, that part will not be disclosed and the remainder will be made available for inspection.

9.9(3) 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 9.10(17A,22,85-87) 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 a person 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.

876—9.10(17A,22,85-87) Routine use.

9.10(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.

9.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to the 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 and federal 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. Disclosure to the public upon request. The custodian of the record may upon request, or on the custodian's own initiative, determine what constitutes legitimate need to use a record.

g. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

876—9.11(17A,22,85-87) Release to subject.

9.11(1) The subject of a confidential record may file a written request to review confidential records about that subject as provided in rule 9.6(17A,22,85-87). 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 the workers' compensation commissioner, deputy commissioner, an agency attorney, or employee of the agency, or what would otherwise be privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by Iowa Code section 22.7(5).

d. As otherwise authorized by law.

9.11(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.

876—9.12(17A,22,85-87) Availability of records.

9.12(1) General. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

9.12(2) The record of declaratory rulings, declaratory orders, contested case proceedings, decisions, orders, rulings, settlements, and opinions are open for public inspection and copying.

9.12(3) Records obtained from the division of vocational rehabilitation are open records.

9.12(4) 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 pursuant to Iowa Code section 72.3.

b. Tax records made available to the agency pursuant to Iowa Code sections 422.20, 422.72.

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

d. Minutes and tape recordings of closed meetings of a government body pursuant to Iowa Code section 21.5(4).

e. 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.

f. Records which constitute the work product of the workers' compensation commissioner, deputy commissioner, an agency attorney, or employee of the agency, 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. 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.

g. Personnel records maintained by the agency of past and present employees which may contain confidential information under Iowa Code section 22.7(11).

h. Any other records made confidential by law.

9.12(5) 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 9.4(17A,22,85-87). 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 9.4(3).

876—9.13(17A,22,85-87) Personally identifiable information.

9.13(1) 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 9.1(17A,22,85-87). 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. Unless otherwise stated, the authority for this agency to maintain the record is provided by Iowa Code chapters 17A, 22, and 85 to 87. The record systems maintained by the agency are:

a. Records submitted to and gathered by the division of workers' compensation pursuant to Iowa Code chapters 17A, 22, and 85 to 87 and this agency's rules regarding claims for workers' compensation benefits. These records are stored in an automated data processing system, hard copy, microfilm, or microfiche. These records may contain medical records, briefs, depositions, transcripts of evidence, pictures, diagrams, exhibits, charts, employer records, insurance carrier records, vocational rehabilitation records, attorney records, court records, correspondence, claim form data, wage records, docket sheets, memoranda, attorney or staff notes, research material, witness information, documents, case management records, investigation materials, and any other records obtained pursuant to Iowa Code chapters 17A, 22, and 85 to 87 and this agency's rules. These records may be stored in an automated data processing system, hard copy, microfilm, or microfiche. These records may contain, in whole or in part, records determined to be confidential as defined in subrule 9.12(4).

b. Records which constitute the work product of an employee of the agency pursuant to Iowa Code chapters 17A, 22, and 85 to 87 and this agency's rules. These records may be stored in an automated data processing system, hard copy, microfilm, or microfiche. Some of these records may contain, in whole or in part, records determined to be confidential as defined in subrule 9.12(4).

c. Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. These 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).

d. Other groups of records. This subrule describes groups of records maintained by the agency other than record systems as defined in rule 9.1(17A,22,85-87). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 9.12(17A,22,85-87). The records listed may contain information about persons.

(1) Rule-making records. Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection. This information is collected pursuant to Iowa Code section 17A.4. This information may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(2) Agency records. Agendas, minutes, and materials presented to the division of workers' compensation are available from the custodian, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. Agency records may contain information about persons who participate in meetings. This information is collected pursuant to Iowa Code sections 21.3 and 85A.2(4). These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(3) Publications. News releases, annual reports, project reports, agency newsletters, etc., are available at the administrative office of the agency. Brochures describing various agency programs are available at the administrative office of the agency. Agency news releases, project reports, and newsletters may contain information about persons, including agency staff or members of agency committees. Most publications of general interest are available in the state law library. These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(4) Statistical reports. Reports of agency data are available from the agency. Statistical reports may contain personally identifiable information. These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(5) Decisions and opinions. All records of contested case proceedings, decisions, orders, rulings, settlements, and opinions are open to the public. These records contain information about a person collected under the authority of Iowa Code chapters 17A, 22, and 85 to 87 and this agency's rules. These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(6) Declaratory rulings and declaratory orders. Records may contain information about persons making requests for declaratory rulings, declaratory orders or comments from other persons concerning the rulings or orders. This information is collected pursuant to Iowa Code section 17A.9. These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

(7) Published materials. The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

(8) Policy manuals. The agency employees' manuals are available in the administrative office of the agency. Subscriptions to all or part of the employees' manuals are available at the cost of production and handling. Requests for subscription information should be addressed to the Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319. Policy manuals may contain confidential information under Iowa Code section 17A.2(7) "f" or other applicable provision of law.

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

e. Other records used by the agency which may not otherwise be accounted for by these rules include correspondence files, surveys, information and data files, requests for review of open records, budget documents, agency property, yearly reports, office policy for employees, time sheets, and records used for processing purposes internally (such as data processing and word processing requests, supply shipments, vouchers, requisitions, charge accounts, order, etc.). Some of these records may contain information about persons.

9.13(2) Data processing systems used by the agency may permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

876—9.14(17A,22,85-87) Applicability. This chapter does not:

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

2. Make available to the general public 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 in the possession of the agency which are governed by the rules 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, person or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code chapters 17A, 22, 85, 85A, 85B, 86, and 87.

[Filed 4/29/88, Notice 3/9/88—published 5/18/88, effective 7/1/88]

[Filed 1/10/97, Notice 12/4/96—published 1/29/97, effective 3/5/97]

[Filed emergency 7/1/98—published 7/29/98, effective 7/1/98]

[Filed 5/12/00, Notice 4/5/00—published 5/31/00, effective 7/5/00]