

CHAPTER 19
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[Prior to 5/18/88, see 321—2.6(249D)]

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 19]

The department on aging 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.

17—19.1(17A,22) Definitions. As used in this chapter:

“*Agency*” in these rules means the department on aging.

“*Custodian*” means the department director and the division administrators.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—19.3(17A,22) Requests for access to records.

19.3(1) Location of record. In lieu of the words “(insert agency head)”, insert “director of the department on aging”. In lieu of the words “(insert agency name and address)”, insert “the Iowa Department on Aging, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025”.

19.3(2) Office hours. In lieu of the words “(insert customary office hours and, if the 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”.

19.3(7) Fees.

c. Search and supervisory fees. In lieu of the words “(specify time period)”, insert “one-half hour”. In lieu of the parenthetical sentence at the end of the paragraph, insert “If the request requires research or if the record or records cannot readily be retrieved by the office, the requester will be advised of this fact. In addition, all costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.”

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—19.9(17A,22) Disclosures without consent of the subject.

19.9(1) Disclosure. Open records are frequently disclosed without consent of the subject.

19.9(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 17—19.10(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 the head 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 an individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—19.10(17A,22) Routine use.

19.10(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.

19.10(2) Routine uses. To the extent allowed by law, the following uses are considered to be 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 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.

g. Any disclosure to AAAs on matters pertinent to the performance of their responsibilities.

h. Any disclosure to care review committees on matters pertinent to the performance of their responsibilities.

i. Any disclosure to agencies and organizations which advocate for older persons and volunteer time and effort to programs so that program goals can be achieved.

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17—19.11(17A,22) Consensual disclosure of confidential records.

19.11(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 17—19.6(17A,22).

19.11(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, to the extent permitted by law, may be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

19.11(3) Obtaining information from a third party. The agency is required to obtain information to resolve long-term care complaints received by the ombudsman, to provide information on legal assistance issues and to determine that eligibility requirements are met for care review committee members. Requests made to third parties for this information may involve the release of confidential information about individuals. Except as provided in rule 17—19.10(17A,22), the agency may make these requests only when the individual has authorized the release in writing.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—19.12(17A,22) Release to subject.

19.12(1) Subjects of confidential records. The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 17—19.6(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 Iowa Code section 22.7(5).

d. As otherwise authorized by law.

19.12(2) Multiple subjects. 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 8489B, IAB 1/27/10, effective 1/7/10]

17—19.13(17A,22) Availability of records.

19.13(1) Open records. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

19.13(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 under Iowa Code sections 422.20 and 422.72.
- c.* Any other record made confidential by law.
- d.* Records which are part of the long-term care resident's advocate/ombudsman complaint system under Iowa Code section 231.43.

e. Any records which are client information for the Senior Community Service Employment Program. Pursuant to authority provided in Iowa Code section 231.51, the department administers the SCSEP program, a federally funded employment program. Federal law requires that personal information about participants be kept confidential under 20 CFR 674.203b-3(1985). The department has determined that the U.S. Department of Labor would not provide funding for the SCSEP program unless the confidentiality of participants is maintained. In order, therefore, to prevent the denial of these funds, the information will be kept confidential and any requirements to the contrary in Iowa Code chapter 22 must be waived as provided in Iowa Code section 22.9.

- f.* Records which are exempt from disclosure under Iowa Code section 22.7.
- g.* Minutes of closed meetings of a government body, Iowa Code section 21.5(4).
- h.* Identifying details of 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."
- i.* 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 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, as indicated in Iowa Code sections 17A.2 and 17A.3.

j. 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.

19.13(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 17—19.4(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 19.4(3).

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—19.14(17A,22) Personally identifiable information—aging programs. Transferred to 441—9.18(17A,22), IAC Supplement 6/28/23.

17—19.15(17A,22) Other groups of records.

19.15(1) *Other records.* This rule describes groups of records maintained by the agency other than record systems as defined in rule 17—19.1(17A,22). These records are routinely available to the public. However, the agency files of these records may contain confidential information, as discussed in rule 17—19.13(17A,22). The records listed may contain information about individuals. Some records are stored both on paper and in an automated data processing system unless otherwise noted.

19.15(2) *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.

19.15(3) *Commission and advisory council records.* Agendas, minutes, and materials presented to the commission for the department on aging and the state advisory council are available from the office of the department on aging, 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. Commission and advisory council records contain information about participants in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier and is not stored in an automated data processing system.

19.15(4) *Publications.* Publications such as news releases, annual reports, project reports and agency newsletters are available from the office of the department on aging.

19.15(5) *Other publications.* Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of councils or committees. This information is not retrieved by individual identifier, and is not stored on an automated data processing system.

19.15(6) *Statistical reports.* Periodic reports of units of service for various agency programs are available from the department on aging. Statistical reports do not contain personally identifiable information.

19.15(7) *Grants.* Records on persons receiving grants for activities funded pursuant to state or federal laws are available through the office specified in subrule 19.2(1). These records may contain information about employees of a grantee. This information is not retrieved by individual identifier, and is not stored in an automated data processing system. The information is collected under the authority of Iowa Code chapter 231.

19.15(8) *Appeal decisions and advisory opinions.* All final orders, decisions and opinions are open to the public except for information that is confidential according to subrule 19.13(2). These records may contain information about individuals collected under the authority of Iowa Code chapter 231.

19.15(9) *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.

19.15(10) *Policy manuals.* The agency employees' and other procedures manuals, containing the policies and procedures for programs administered by the agency, are available in the department specified in rule 17—19.1(17A,22). Policy manuals do not contain information about individuals. Some of this information may be confidential under Iowa Code section 17A.2(7) "f" or other applicable provisions of law.

19.15(11) *Iowa aging memos and directives.* The agency provides guidance and instructions to its grantees through Iowa aging memorandums and Iowa aging directives. Copies of these documents are available from the department. Iowa aging memorandums and Iowa aging directives may contain information about individuals under the authority of Iowa Code chapter 231.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—19.16(17A,22) *Data processing systems.* All 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.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—19.17(17A,22) *Applicability.* This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals 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 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 rules of the agency.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

These rules are intended to implement Iowa Code sections 17A.3(1) "d," 22.11, 217.6 and 217.30 and Iowa Code chapters 228 and 231.

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