

701—5.5(17A,22,421,422) Requests for treatment of a record as a confidential record and its withholding from examination. The department may treat a record as a confidential record and withhold it from examination only to the extent that it is authorized by Iowa Code sections 22.7, 422.20, and 422.72; other applicable provisions of law; or an order. Persons may request that the department treat a document as a confidential record and withhold the document from public inspection. The procedures for making a request are described below.

5.5(1) Requests related to records submitted as part of an appeal or contested case. Any person who seeks to request confidential treatment for any document submitted as part of an appeal or contested case filed under 701—Chapter 7 must file a motion for redaction as described in rule 701—7.8(17A).

5.5(2) Requests for confidential treatment of any other record. Any person who seeks to request confidential treatment of any record that has not been submitted as part of an appeal or contested case filed under 701—Chapter 7 must follow the following procedure:

a. Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

b. Request. A request that a record be treated as a confidential record and be withheld from public inspection shall:

- (1) Be in writing; and
- (2) Be filed with the department using the one of the methods in subrule 5.3(2), excluding submission by telephone listed in paragraph 5.3(2)“d”; and
- (3) Set forth the legal and factual basis justifying such confidential record treatment for that record; and
- (4) Include the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. A person may request that a record be treated as confidential for a limited period of time. Requests for limited confidential record treatment shall also specify the precise period of time for which that treatment is requested.

(5) The requester shall, if possible, include a copy of the record for which confidential record treatment is being sought with the request.

c. Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record, unless otherwise provided by law. However, if a person who has submitted information to the department that could be considered a confidential record under Iowa Code section 22.7(3) or 22.7(6) does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

d. Timing of decision. A decision by the custodian about whether to disclose a record or a portion of a record to members of the public may be made when a request for confidential record treatment is filed, or when the custodian receives a request for access to the record by a member of the public.

e. Request granted or deferred. If a request for confidential record treatment is granted, or if action on a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection during the pendency of that subsequent request.

f. Request denied and opportunity to seek an injunction. If a request for confidential record treatment is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the

provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

This rule is intended to implement Iowa Code chapters 17A, 22, 421, and 422.
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