

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

561—2.1(17A,22) Purpose and scope.

2.1(1) In addition to the Uniform Rules relating to fair information practices which are published on the Iowa general assembly's website at <https://www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf>, this chapter implements Iowa Code section 22.11 by establishing additional Department of Natural Resource (department) procedures for the maintenance of records.

2.1(2) This chapter does not:

- a. Require the department to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
- b. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
- c. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the department which are governed by the regulations of another agency.
- d. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
- e. Make available records compiled 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 are governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations.

561—2.2(17A,22) Confidential Records. Unless deemed as a confidential record or considered as a confidential record by Iowa Code section 22.7, all records are considered public and routinely disclosed without the consent of the subject.

2.2(1) *Processing of business confidentiality claims.* In order to request a record to be held confidential with the department, the party will comply with the following provisions.

a. **Applicability/availability.** Businesses which provide information to the department in applications, reports or otherwise in recorded form, or from or about which information is obtained and recorded by the department, may request that information not be disclosed to others for reasons of business confidentiality. Until such time as a request for confidentiality is received by the department, all information will be available to the public. If a claim is received after the information itself is received, the department will make such efforts as are administratively practicable to associate the claim with all copies of the previously received information. However, the department cannot ensure that such efforts will be effective, in light of the possibility of prior disclosure or dissemination of the information beyond the department's reasonable control.

b. **Confidentiality Request Process.** A business which submits information to the department may assert a business confidentiality claim in the following form:

(1) At the time the information is submitted, attach a cover sheet indicating the business is seeking the information to be held confidential. When only a portion of the information is claimed to be confidential, only that portion shall be deleted, with appropriate reference to a separate claim for business confidentiality, which separate claim shall be submitted as specified above. If a request not to disclose information is filed with the department, the party shall file together with the document a second copy of the document from which has been deleted the information for which such party wishes to claim confidential treatment. The business shall conspicuously indicate on the face of the original document that it is confidential information and shall file a claim for confidential status in accordance with the provisions of 2.2.

c. **Contents of claim.** All claims for confidentiality must be substantiated with the following information in a letter attached to the proposed confidential document:

- (1) A statement of all measures the business has taken to protect the confidentiality of the information, and a statement of intent to continue to take such measures;
- (2) Practices and policies of other businesses, if known, regarding confidentiality of similar information;
- (3) A statement that the information is not, and has not been, reasonably attainable without the consent of the business by other persons other than government bodies by use of legitimate means;

(4) A statement demonstrating that disclosure of the information is likely to cause substantial harm to the business's competitive position;

(5) A reference to any other determinations of confidential status of the information or similar information.

d. Initial action by department. All claims will be reviewed within ten days of receipt for completeness and applicability of subrule 2.2(3). If the claim does not include the substantiation required by 2.2(1) "c," or if the claim relates to information within 2.2(3), the business making the claim will be so notified by certified mail. If the substantiation or comment regarding the inapplicability of 2.2(3) is not received by the department within ten days of the date on the return receipt, the department will place the information in the public file. Otherwise, all information claimed to be confidential will be treated as such by the department until further notice. A timely response from the notice under this paragraph will be ruled on by the department within ten days, based on the applicability of 2.2(3) or compliance with 2.2(1) "c" as appropriate.

e. Initiation of official determination. All claims not rejected under 2.2(1) "d" will receive an official determination when a request for disclosure covering such information is received by the department or when the department deems it advisable to make a determination because a request for disclosure is likely to be received or because of administrative burdens in maintaining the information confidential. The procedures and criteria below shall be followed.

f. Substantive criteria for use in confidentiality determinations. Determinations will hold that business information is entitled to confidential treatment for the benefit of a particular person if:

(1) The business has taken and intends to continue to take reasonable measures to protect the confidentiality of the information;

(2) The information is not readily obtainable by others by legitimate means;

(3) The claim is not unreasonable in view of the nature of the information, the interests, and normal practices of the business, and the practices of other businesses;

(4) No statute or rule specifically requires disclosure of the information; and

(5) There is a substantial likelihood that disclosure of the information would cause substantial harm to the competitive position of the business.

Prior determinations by the courts, the department or other agencies on the information or similar information shall be given due consideration and effect.

g. Determination The department will transmit its determination regarding a claim for business confidentiality to the claimant by certified mail, notifying the claimant of the opportunity to provide comments within ten days subject to reasonable extension upon written request, and that failure to comment will be construed to indicate agreement with the preliminary determination. If the determination is in response to a request for disclosure, the person requesting the disclosure shall be sent a similar notice in the same manner within ten days of the request. If any substantial comments are received, the final decision shall be made by the director or designee. If no substantial comments are received, the preliminary determination becomes the final decision.

h. All procedures within this rule will not be considered contested case proceedings as provided in Iowa Code chapter 17A.

2.2(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;

b. Tax records made available to the department;

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

d. Minutes of closed meetings of a government body;

e. Identifying details in 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";

f. Those portions of the department's staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by 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 department.

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.

2.2(3) Notwithstanding any other provision, the following information will not be considered confidential by the department:

a. Emission data; for purposes of this subrule, "Emission data" means the following, with reference to any source of emission of any substance into the air:

(1) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source) or any combination of the foregoing;

(2) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source); and

(3) A general description of the location and nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

b. Analytical results of monitoring or public water supply systems;

c. Name and address of any permit applicant; and

d. NPDES permits, applications (including any information required by NPDES application forms) and effluent data. For purposes of this subrule, "Effluent data" means the following, with reference to any source of discharge of any pollutant:

(1) Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of any pollutant which has been emitted by the source (or of any pollutant resulting from any discharge from the source) or any combination of the foregoing;

(2) Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of the pollutants which, under an applicable standard or limitation, the source was authorized to discharge (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source); and

(3) A general description of the location and nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

2.2(4) Authority to release confidential records. The department 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. If the department initially determines that it will release such records, the department may where appropriate notify interested parties and withhold the records from inspection.

561—2.3(17A,22) Disclosures without the consent of the subject.

2.3(1) 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 2.4(17A,22) or in any notice for a particular record system.

b. To a recipient who has provided the department 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.

561—2.4(17A,22) Routine use.

2.4(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.

2.4(2) To the extent allowed by law, the following uses are considered routine uses of all department records:

a. Disclosure to those officers, employees and agents of the department 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 or officer which this office is advising or representing in the matter in question or to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfer of information within the department, 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 department is operating a program lawfully.

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

561—2.5(17A,22) Consensual disclosure of confidential records.

2.5(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to department disclosure of confidential records as provided in rule 2.7(17A,22).

2.5(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 department 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.

561—2.6(17A,22) Release to subject.

2.6(1) The subject of a confidential record may file a written request to review confidential records about that person. However, the department need not release the following records to the subject:

a. The identity of a person providing information to the department 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.

2.6(2) Where a record has multiple subjects with interest in the confidentiality of the record, the department may take reasonable steps to protect confidential information relating to another subject.

561—2.7(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the department by personal identifier in record systems as defined by the Uniform Rules. 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. Records maintained by the department of natural resources, the environmental protection commission and the natural resource commission are in accordance with guidelines as set forth by the state records commission's file system. An updated index is maintained by the department and is available for public inspection. Records are collected pursuant to authorities contained in Iowa Code chapters 106, 107, 109, 109B, 110, 110A, 110B, 111, 111A, 111B, 112, 321G, 458A, 460A and Iowa Code Title XI, subtitles 1, 2, 3, 4 and 6. Records are stored on paper, microfilm, microfiche, and, in some cases, automated data processing systems, such as electronic management systems and department web application.

561—2.8(17A,22) Other groups of records. This rule describes groups of records maintained by the department other than record systems as defined in rule the Uniform Rules. These records are routinely available to the public. However, the department's files of these records may contain confidential information. In addition, some records may contain information about individuals. Records are stored on paper, microfilm, microfiche, and, in some cases, automated data processing systems, such as electronic management systems and department web application.

2.8(1) Rulemaking. Rulemaking 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.

2.8(2) Commission records. Agendas, minutes and materials presented to the environmental protection commission and the natural resource commission are available from the office of the director, except these records concerning closed sessions which are confidential under Iowa Code section 21.5(4). Commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3.

2.8(3) Publications. News releases, annual reports, Iowa Conservationist, Iowa Outdoors, project reports, agency newsletters, etc., are available from the department offices for public information. Brochures describing various department programs are available at local offices of the department. The publications may contain information about individuals, including department staff or members of the commission or committees.

2.8(4) Statistical reports. Periodic reports for various department programs are available from the department offices for public information.

2.8(5) Grants or loans. Records on persons and institutions receiving grants or loans are available through the institutions, also for public information. The records may contain information about employees of a grantee.

2.8(6) Published materials. The department 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.

2.8(7) Policy manuals. The department employees' manual, containing the policies and procedures for programs administered by the department, is available upon request. Policy manuals do not contain information about individuals.

2.8(8) All other records that are not exempted from disclosure by law. The department maintains a variety of records which do not generally contain information pertaining to named individuals.

2.8(9) All other records that are not exempted from disclosure by law.

These rules are intended to implement Iowa Code section 22.11.