

## Regulatory Analysis

### 871 Chapter 42

#### PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

##### *Purpose and Summary*

This is the Department of Workforce Development's adoption of the rules of the Governor's Task Force on Uniform Rules of Agency Procedure related to public records and fair information practices.

##### *Analysis of Impact*

1. Persons affected by the proposed rulemaking:
  - Classes of persons that will bear the costs of the proposed rulemaking:  
General Public.
  - Classes of persons that will benefit from the proposed rulemaking:  
General Public.
  
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
  - Quantitative description of impact:  
None.
  - Qualitative description of impact:  
None.
3. Costs to the State:
  - Implementation and enforcement costs borne by the agency or any other agency:  
None.
  - Anticipated effect on state revenues:  
None.
4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:  
Not applicable.
5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:  
Not applicable.
6. Alternative methods considered by the agency:
  - Description of any alternative methods that were seriously considered by the agency:  
Not applicable.
  - Reasons why alternative methods were rejected in favor of the proposed rulemaking:  
Not applicable.

### *Small Business Impact*

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Not applicable.

### *Text of Proposed Rulemaking*

The Department of Workforce Development hereby adopts the 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 with the following exceptions and amendments:

**871—42.1 (22,84A) Definitions.** As used in this chapter:

*"Agency."* In lieu of the words "(official or body issuing these rules)", insert "the Department of Workforce Development".

*"Person"* means an individual, corporation, governmental entity, estate, trust, partnership, association, or any other legal entity.

*"Personally identifiable information."* In lieu of the words "an individual in a record which identifies the individual and which is contained in a record system", insert "a person in a record which identifies the person and which is contained in a record system".

*"Record system."* In lieu of the words "an individual, number, symbol, or other unique retriever assigned to an individual", insert "a person, number, symbol or other unique retriever assigned to the person".

**871—42.3 (22,84A) Request for access to records.**

**42.3(1) Location of record.** In lieu of the words "(insert agency head)", insert "director". Also, in lieu of the words "(insert agency name and address)", insert "Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319".

**42.3(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 legal holidays".

**42.3(4) Response to requests.** In lieu of the words "X.4", insert "42.4(22,84A)".

**42.3(7) Fees.**

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

**871—42.4 (22,84A) Access to confidential records.** In lieu of the words “rule X.3”, insert “rule 42.3(22,84A)”.

**871—42.6 (22,84A) Procedure by which additions, dissents, or objections may be entered into certain records.** In lieu of the words “(designate office)”, insert “the Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319”.

**871—42.7 (22,84A) Consent to disclosure by the subject of a confidential record.** Remove the parentheses around “(and, where applicable, the time period during which the record may be disclosed)”.

**871—42.9 (22,84A) Disclosure without the consent of the subject.**

**42.9(1)** An open record is routinely disclosed without the consent of the subject.

**42.9(2)** To the extent allowed by law, disclosure of a confidential record may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without consent of the subject:

- a.* For a routine use as defined in rule 42.10(22,84A).
- b.* To another governmental 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 governmental 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.
- c.* To the legislative services agency under Iowa Code section 2A.3.
- d.* Disclosure in the course of employee disciplinary proceedings.
- e.* In response to a court order or subpoena.
- f.* To the citizens’ aide under Iowa Code section 2C.9(3).

**871—42.10 (22,84A) Routine use.**

**42.10(1)** Defined. “Routine use” means the disclosure of a record without the consent of the subject, 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.

**42.10(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 officer, employee, and agent, or on the custodian’s own initiative, determine what constitutes legitimate need to use a confidential record.
- 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. Disclosure to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

**871—42.11 (22,84A) Release to a subject.**

**42.11(1)** The subject of a confidential record may file a written request to review a confidential record about that person as provided in rule 42.6(22,84A). However, the agency will not release the following records to the subject:

a. The identity of a person providing information to the agency when the information is authorized to be held confidential pursuant to Iowa Code subsection 22.7(18) or other provision of law.

b. A record need not be disclosed to the subject when it is the work product of an attorney or is otherwise privileged.

c. A peace officer's investigative report should be withheld from the subject, except as required by Iowa Code subsection 22.7(5).

d. As otherwise authorized by law.

**42.11(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.

**871—42.12 (22,84A) Availability of records.**

**42.12(1)** *Open records.* Agency records are open for public inspection and copying unless otherwise provided by law or rule.

**42.12(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. Labor market records made available to the agency under an agreement with the United States Department of Labor, Bureau of Labor Statistics, and withheld from public inspection pursuant to 29 Code of Federal Regulations 70 dated July 1, 1987.

b. County economic development survey records made available to the agency under an agreement with the Department of Workforce Development, and withheld from public inspection pursuant to Iowa Code subsection 96.11(7).

c. Sealed bids received prior to the time set for public opening of bids pursuant to Iowa Code section 72.3.

d. Tax records made available to the agency pursuant to Iowa Code sections 422.20 and 422.72.

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

f. Minutes of closed meetings of a government body pursuant to Iowa Code subsection 21.5(4).

g. 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."

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

to Iowa Code sections 17A.2 and 17A.3:

- (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.

*i.* Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code subsection 22.7(4), section 622.10, and section 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.

*j.* Unemployment insurance division tax and claim records pursuant to Iowa Code section 96.11(6) unless the records become part of the record in a hearing before an administrative law judge in a contested case pursuant to Iowa Code chapter 96.

**42.12(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 42.4(22,84A). 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 42.4(3).

**871—42.13 (22,84A) 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 42.1(22,84A). 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.

**42.13(1)** The record systems maintained by the agency are:

*a. Labor market records.* These records are collected from employing units under an agreement with the United States Department of Labor, Bureau of Labor Statistics, for the purposes of analyzing and distributing general labor market information including current employment statistics, employment by occupation statistics, local area unemployment statistics, wage and hour statistics, and permanent mass layoff and plant closing statistics. These records are stored in an automated data processing system and may be retrieved by a personal identifier.

*b. County economic development survey records.* These records are collected from employing units and individuals under an agreement with the Department of Workforce Development, for the purposes of providing local economic development groups with statistical information on the number and characteristics of individuals available for employment within a county as well as providing employee wage by occupation and benefit information. These records are stored in an automated data processing system and may be retrieved by a personal identifier.

*c. Personnel files.* The agency maintains files containing information about 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

subsection 22.7(11). Some of these records are stored in an automated data processing system and may be retrieved by a personal identifier.

*d. Other groups of records routinely available for public inspection.* This paragraph describes groups of records maintained by the agency other than in a record system as defined in rule 42.1(22,84A):

(1) Rule making. Rule-making records may contain information about persons making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

(2) Committee records. Agendas, minutes, and materials presented to the Department of Workforce Development coordinating committee are available from the custodian, except those records concerning closed sessions which are exempt from disclosure under Iowa Code subsection 21.5(4). Coordinating committee records contain information about persons who participate in meetings. This information is collected pursuant to Iowa Code section 21.3 and subsection 84A.2(4). These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

(3) Publications. News releases, annual reports, project reports, agency newsletters, brochures, etc., are available at the administrative office of the agency. These may contain information about persons, including agency staff or members of agency committees. These records are not stored on an automated data processing system and may not be retrieved by a personal identifier.

(4) Statistical reports. Periodic reports of labor market information are available from the agency. Statistical reports do not contain information about persons.

(5) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to paragraph “g” of subrule 42.12(2). These records may contain information about a person collected under the authority of Iowa Code section 84A.1.

(6) 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.

(7) Policy manuals. The agency employees’ manual, containing the policies and procedures for programs administered by the agency, is available in the administrative office of the agency. Subscriptions to all or part of the employees’ manual are available at the cost of production and handling. Requests for subscription information should be addressed to the custodian of the record, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319. Policy manuals do not contain information about persons.

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

**42.13(2)** All data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

**871—42.14 (22,84A) 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 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 are governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.