

STATE OF OHIO



DEPARTMENT OF REHABILITATION
AND CORRECTION

SUBJECT: Public Records	PAGE <u> 1 </u> OF <u> 5 </u> NUMBER: 07-ORD-02
RULE/CODE REFERENCE: ORC 149.43; ORC 149.011 ORC 5120.21; AR 5120-9-49; AR 5120:1-1-36	SUPERSEDES: 07-ORD-2 dated 02/01/11
RELATED ACA STANDARDS: 2-1079; 2-1128; 4-APPFS-3C-03	EFFECTIVE DATE: January 2, 2012
	APPROVED: 

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Ohio Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

The purpose of this policy is to establish a comprehensive and consistent procedure for complying with Ohio's public record law and responding to public record requests.

III. APPLICABILITY

This policy applies to all Department of Rehabilitation and Correction employees and contractors, particularly those who receive and/or process requests for records access and who review those materials prior to release.

IV. DEFINITIONS

Public Record - Records kept by the Department unless exempted or excepted from public disclosure by any state or federal statutes or administrative codes, or other legally binding authorities.

Public Records Coordinator – An employee designated by the Managing Office to be responsible for the implementation and oversight of public records requirements, as set forth in this policy.

Record - Any item that is kept by the Department that: (1) is stored on a fixed medium, including an electronic or digital medium (2) is created, received, or sent under the jurisdiction of the Department, and (3) documents the organization, functions, policies, decisions, procedures, operations, or other activities of the Department.

Redaction - Obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a record.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction (DRC) to make available to requesting persons, organizations, and agencies any records that are considered public records. DRC will endeavor to keep non-public, within the constraints of Ohio public record law, any records that are exempt from public disclosure.

VI. PROCEDURE

A. General Information

1. Each Managing Office shall designate a Public Records Coordinator to manage public records requests for the assigned area. The Public Records Coordinator shall be responsible for overseeing compliance with the requirements set forth in this policy. The Public Records Coordinator shall work closely with the DRC Office of Legal Services to implement the procedures as established.
2. All department personnel should familiarize themselves with the information and documents considered “public” and “non-public” by DRC. In addition to ORC section 149.43, public records are addressed in administrative rules and other departmental policies. Determining whether a particular item is a public record focuses on the use and substance of the document or record, not on its form or where and how it was created. DRC may disclose, provide access to, and/or make copies available of, any public record, as described in paragraph (A) of rule 5120-9-49 of the Ohio Administrative Code (OAC). DRC shall not disclose, nor provide access to, nor make copies available of, any non-public record, as described in paragraph (B) of rule 5120-9-49 of the OAC. The most common non-public records are inmate records and records of offenders under the supervision of the Adult Parole Authority pursuant to section 5120.21 of the Revised Code. However, certain inmate and offender records may be made available to the public at the discretion of the Director, Managing Officers or the Deputy Director of the Division of Parole and Community Services or, as appropriate, their designees. Additionally, certain non-public records may be disclosed to the public according to paragraphs (C) and (D) of rule 5120-9-49 of the OAC.

B. Public Record Maintenance and Organization

1. Information and records, and copies thereof, that are considered public, shall be made available at the office or facility where the records are maintained. Each office or facility shall organize and maintain all public records in a manner that serves both the administrative needs of the office, as well as the public’s interest in the availability of those records for inspection and copying. All offices and facilities shall be responsible for appointing a Public Records Coordinator to manage the processing of public record requests and to arrange for an area to accommodate in person inspection. Managing Officers or their designees shall be responsible for approving the material to be inspected or copied and keeping a record memorializing each request and the response thereto.

2. Announcements regarding the availability of public records shall be posted in areas accessible to the general public. The DAS and DRC record retention schedules shall be made available to members of the public upon request. Copies are also posted on the Department's website <http://www.drc.ohio.gov>.

C. Record Requests

Each request for public records shall be evaluated for a response using the following guidelines.

1. Identification of Requested Record. Although the Public Records Act does not require specific language to make a public records request, the requester must specifically identify the requested records with sufficient clarity to allow staff to identify, retrieve, and review the records. If it is not clear what records are being sought, staff will ask the requester for clarification, and assist the requestor in revising the request by informing the requestor of the manner in which the office maintains its records.
2. Form of Request. Requests may be made in person, by letter, e-mail, or telephone. Requestors are encouraged to make any and all public records request in written form. Nonetheless, a requestor is not required to do so. While the requestor does not have to make a written request, doing so enables staff to identify the responsive records with greater speed and accuracy, and to maintain a better record of the request and response.
3. Identification of Requestor and Intended Use of Records. A requestor is not required to provide his or her identity or the intended use of the requested public record. This does not preclude requesting mailing address information. Security considerations require that visitors produce identification and sign into our facilities before entry.

D. Availability of Records

1. Public records are to be available for inspection Monday through Friday between 8:00 a.m. and 5:00 p.m. with the exception of published holidays. Public records must be made available for inspection promptly. Copies of public records must be made available within a reasonable period of time. "Prompt" and "reasonable" take into account the volume of records requested, the form of the requested records, the proximity of the location where the records are stored and the necessity for any legal review. When the requested records are available on the DRC website the requestor should be advised of this fact.
2. Department staff is only obligated to make records available as they are kept in the normal course of business and they do not have an obligation to perform research or create new records in responding to a public record request. Staff shall address any questions regarding these matters to Legal Services for assistance.

E. Redaction

Many public record requests may be for records maintained by DRC that will require review and redaction of any non-public information. Redaction, if required, shall be completed prior to the release of any public record. The Public Records Coordinator shall be responsible for overseeing the redaction of non-public information, in conjunction with the Office of Legal Services.

F. Response Time

Upon receipt, each public records request shall be evaluated for an estimated length of time required to gather the records.

1. **Routine Requests.** Routine requests should be satisfied immediately if feasible to do so. An immediate reply should not be feasible at the institutions where records are kept in secure areas not accessible to the public. In addition, there may be a requirement for legal review. These facts do not relieve the location from responding quickly where there is no need for redaction or legal review. Records in this category include, but are not limited to, press releases, budgets, salary information, forms and applications, personnel rosters, policies (with the exception of security policies), and administrative rules.
2. Requested records may be transmitted by e-mail in a reasonable time if fewer than twenty pages of copies are requested in total or if the records are readily available in an electronic format that can be securely and easily e-mailed.
3. **Non-Routine Requests.** If a request, or requests, is significantly beyond routine, e.g., seeking a large number of copies; or, seeking records more than one year old; or, seeking records from multiple institutions or offices; or, records involving multiple persons, or; requests involving pending or potential litigation; or other circumstances that would make the request non-routine, etc. the acknowledgement of the request should include the following:
 - a. An estimated number of business days it will take to satisfy the request.
 - b. The estimated cost to be borne by the requestor if the request is fulfilled, if known.
 - c. Identification of the type of items within the responsive records that may be exempt from disclosure and/or subject to redaction, if known

Legal Services may coordinate or direct the response to a non-routine request. It may be necessary for Legal Services to prepare an individualized response to such requests which might include making the records available at the Operations Support Center instead of an institution or some other place where the records might otherwise be found.

4. **Record Review.** Prior to providing records deemed responsive to a specific request, the Public Records Coordinator or other designated staff shall review the records to ensure the response complies with applicable departmental policies and rules as well as any statutory restrictions on dissemination of information. Staff shall address any questions regarding these matters to Legal Services, who, in turn, shall provide advice and legal justification for withholding specific information.

G. Denial and Redactions

When a record is denied or non-public portions of a record are redacted, staff is obligated to describe the record withheld or information redacted and cite the statutory exemption or other legal authority for doing so. If a paper record contains public and non-public information, staff shall make a copy of the record, line through the non-public part with a black magic marker and recopy to ensure that the non-public information is not visible through the redaction. Certain

information is stored in electronic format and it may be necessary to generate paper copies in order to make the redaction if it is not possible to redact electronically.

H. Waiver of Exemption

The Department may choose to voluntarily waive a valid exemption when providing non-public records in response to a public records request. This waiver should not be construed to waive, and does not in fact waive, any right to the future assertion of the exemption. However, if the Department releases a record to any member of the public, then the Department waives, or gives up, its right to apply that exception to that particular record if someone else requests the same particular record. The same record must be disclosed to every other future requester. The waiver is only as to that specific record, not to other related records, or to the same kind of records in other cases or files.

I. Failure to Respond to a Public Records Request

There are legal and non-legal consequences in failing to timely or properly respond to a public record request. In addition to the distrust in government that failure to comply may cause, failure to comply with a request may result in a court ordering the Department to produce the records, pay the court costs, and pay the requestor's reasonable attorney's fees, and, if applicable, pay statutory damages.

J. Calculation of Costs for Public Records

1. Actual Costs. The Department may only charge for the actual cost of making copies as follows:
 - a. Five cents per page for paper copies. Two sided copies shall be charged at the rate of ten cents per page.
 - b. Downloaded computer files to a compact disc at the rate of one dollar per disc.
 - c. Charges for documents transmitted by e-mail may include the five cents per page charge for all documents printed, copied, redacted or scanned as part of the response and may include charges for third party software and/or services are needed to e-mail large electronic files.
 - d. If a requestor asks that documents be mailed to them, they may be charged the actual cost of postage and mailing supplies.
 - e. You may charge for any supplies needed for mailing when means other than US postage is asked for.
2. Prepayment of Costs. Advanced payment is required for all actual costs which are anticipated to exceed five dollars.
3. Waiver of Costs. The Department may choose to waive any and all costs in connection with a public record request. Any waiver should not be construed to waive, and does not waive any future right of the Department to request and collect actual costs in response to a public record request.