



SUBJECT: Cooperation with Court and Interagency Records Requests	PAGE <u> 1 </u> OF <u> 6 </u>
	NUMBER: 07-ORD-05
RULE/CODE REFERENCE: ORC 149.43, 149.011, 5120.21, 2317.06, 2945.47, 2941.40, 2951.03 Criminal Rule 32.2, AR 5120-9-49, 5120-1-1-36	SUPERSEDES: 07-ORD-05 dated 08/18/10
RELATED ACA STANDARDS: 4-4099, 4-4415	EFFECTIVE DATE: November 22, 2016
	APPROVED: 

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the 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 provide a uniform process for responding to interagency requests, subpoenas, court orders, and certain types of requests for non-public department records and to ensure that review and release practices are consistent.

III. APPLICABILITY

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

IV. DEFINITIONS

Court Order - An order by a court in Ohio, in the form of a journal entry filed with the Clerk of Courts, directing an individual to do something in the context of a case before the court. In contrast to a subpoena, an order is issued by the judge or magistrate who is responsible for hearing the case.

Interagency Request - For DRC purposes, this is a request for information that comes from a municipal, county, state or federal agency for information without an accompanying court order or a subpoena.

Parole Board Record - Any record that is provided to or considered by the parole board in making its decisions and any record prepared by the parole board in carrying out its responsibilities under the Revised Code.

Subpoena - A document commanding a person to appear before a court or other authorized entity, subject to a penalty for non-compliance. Subpoenas are usually issued by a litigant or his attorney for testimony or the production of documents. Certain government agencies (e.g., county coroner), also have subpoena power. A subpoena may direct a staff person to appear and testify, testify and produce documents, or simply produce documents. A subpoena for the production of documents is entitled a “subpoena duces tecum”.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction (DRC) to respond to attorneys, courts, law enforcement and interagencies with respect to subpoenas, court orders, and requests for information maintained by the department. Non-public information will only be released in accordance with all applicable rules, regulations, and statutes.

VI. PROCEDURES

A. The Division of Legal Services shall advise the facilities on all procedures included in this policy. Facility staff may contact the Division of Legal Services with questions or concerns about these issues as deemed necessary. To ensure a prompt and appropriate response, each regional administrator shall designate a staff member to receive, review, and track non-routine subpoenas and court orders as indicated by legal and APA superintendent.

B. Types of Requests

1. Subpoenas

a. A subpoena, although not a court order, is enforceable by the court under its contempt powers. Therefore, the court will demand a timely response. When a subpoena is received the following actions shall be taken:

- i. Determine who is the issuing party of the subpoena;
- ii. If the DRC is a party, the receiver of the subpoena shall contact the appropriate section of the Attorney General’s Office;
- iii. If the DRC is not a requesting party, the receiver of the subpoena or designated contact person shall promptly contact the person who issued the subpoena to determine the full extent of what is being requested. The name and phone number of the requesting party should be contained on the subpoena.

b. Response to the subpoena shall be along the following guideline:

- i. Subpoena for staff member to appear as a witness – The recipient of the subpoena shall contact the person requesting the appearance to determine the nature and substance of the request. Testimony is limited to facts of which an individual has direct and personal knowledge. The requestor should be informed as to whether such testimony can be offered. Inquiry should be made as to whether the submission of an affidavit which is a sworn statement acknowledging specific facts or other documents is a sufficient substitute for the requested appearance.

Staff are required to appear unless the requestor specifies that an appearance is not required.

- ii. Subpoena for an inmate to appear as a witness in a criminal case – Such a request is governed by Revised Code section 2945.47. This statute provides that such testimony may be given by deposition of the inmate at the institution, or by transport of the inmate by the county sheriff to the county court requesting his/her appearance. The judge of the court determines which course of action is taken by court order. An inmate may also be removed to a county in which a conviction was had or a charge is pending for sentence or trial by warrant of the court of common pleas of that county pursuant to Revised Code section 2941.40.
- iii. Subpoena for an inmate to appear as a witness in a civil case – Such a request is governed by Revised Code section 2317.06. This statute provides that if a court determines that the interests of justice demand that an inmate be brought before the court for the presentation of his testimony, the court shall order the person to be brought before it under the procedures set forth in paragraphs (B) or (C) of section 2945.47 of the Revised Code.
- iv. Subpoena for documents – The DRC staff person receiving the subpoena, or designated contact person, shall contact the person who issued the subpoena to determine the full extent of what is being requested. A determination shall be made by the staff person whether records available to the public will be sufficient to satisfy this request. If the request cannot be met pursuant to this policy, a copy of the subpoena, plus pertinent information regarding the contact with the requestor, shall be forwarded to the Division of Legal Services for consultation and guidance. Each document released pursuant to a subpoena shall be carefully reviewed and redacted to ensure that confidential information is not disclosed.

2. Court Orders

- a. A court order may be identified as a journal entry, decision, or order. Court orders must be from an Ohio court and bear the signature of the judge, a certification of the court clerk, or both. If there is any doubt about the validity of a court order, contact the judge's office for verification. Pursuant to section 5120.21(A) of the Revised Code, a court order makes any department record accessible to that court pursuant to its terms. Copies of any records released pursuant to a court order shall be accompanied by a certification of the appropriate records officer. Records released pursuant to a court order shall be accompanied by a cover letter, which summarizes the records enclosed, and includes language indicating that the use of the records submitted under the court order is restricted by sections 149.43 and 5120.21 of the Revised Code. Contact the Division of Legal Services for guidance in responding to a court order.
- b. If the court order includes information the release of which could hinder the secure and orderly operation of a department facility or could lead to physical harm to an inmate, victim, witness or law enforcement officer, the DRC staff person shall contact the Division of Legal Services for guidance and direction.

3. Cooperation with Law Enforcement Agencies

When a law enforcement agency or investigatory section of a government agency requests information from the DRC, the request should be in writing, on the agency's letterhead, and should describe with particularity what information is requested and for what purpose. Institutions and APA offices may disclose, upon such a request, any information considered public under applicable laws, rules and policies. In addition, DRC institutions and offices may disclose an inmate's photograph, fingerprints, social security number, and information concerning the inmate's indictments, convictions, sentences, parole eligibility, and expected release date. Requests for information beyond the scope of that described should be directed to the Division of Legal Services at Operation Support Center.

4. Other Types of Requests

DRC staff may also receive other forms of requests for information besides subpoenas, court orders, and interagency requests. Common requests include, but are not limited to, discovery, medical and mental health information, non-public parole documents, and requests by the media which are processed according to DRC policy 01-COM-09, Media Policy. Staff should refer to DRC Public Records policy, 07-ORD-02, and contact the Division of Legal Services with any questions.

- a. Discovery Requests – A Request for Production of Documents may be received when the DRC is a party to a civil lawsuit, and the opposing party seeks documents under the rules of discovery. Such a request compels the disclosure of the documents. Discovery is governed by the Rules of Civil Procedure as enforced by the supervising judge. When such a request is received, the managing officer's designee shall immediately contact the Office of the Attorney General. The assistant attorney general assigned to the case will provide direction. Staff should contact the Division of Legal Services for assistance, if necessary.
- b. Medical and Mental Health Records – Pursuant to Revised Code section 5120.21(C)(2), certified copies of inmate medical and/or mental health records may be released if two distinct and separate documents are received:
 - i. The signed written request of the inmate to whom the records pertains, designating a licensed attorney or licensed physician to receive the records; and
 - ii. The signed written request on letterhead stationery of either the licensed physician or licensed attorney designated by the inmate.
 - iii. Former inmates to whom the records pertains, may obtain their records as long as we receive a written request with their signature
 - iv. If a DRC medical physician concludes that release of all or any part of the inmate medical record directly to the inmate will result in serious medical harm to the inmate, the physician shall so indicate on the medical record. If a DRC

psychiatrist concludes that release of all or any part of the inmate mental health record directly to the inmate will result in serious mental health harm to the inmate, the psychiatrist shall so indicate on the mental health record. An inmate's records shall be made available to a physician or to an attorney designated in writing by the inmate not more than once every twelve (12) months. When records of a deceased inmate are requested, it is permissible for the executor or designated administrator of the inmate's estate to request the inmate's records along with a designated attorney or physician. For more specific information on access to medical and mental health files, refer to DRC policy, 07-ORD-11, Confidentiality of Medical, Mental Health, and Recovery Services Information.

- c. Non-Public Parole Records – Administrative Rule 5120-1-1-36, Parole Board Records, directs that certain non-public parole board records may be released, according to the procedures established in that rule, to the following representatives:
- a. Approved news media organizations;
 - b. Government officials;
 - c. Victims of any offense of commitment or subsequent parole violation;
 - d. An attorney designated by the victim or the inmate; and
 - e. A private citizen.

The following records are considered non-public parole board records; however, they shall be released in accordance with Administrative Rule 5120:1-1-36, Parole Board Records:

- a. Parole board decision sheets;
- b. Parole board risk assessments (not part of the Ohio Risk Assessment System);
- c. Institutional summary reports (must be released by the institution with a waiver signed by the inmate);
- d. Special conditions of parole;
- e. Parole candidate information sheets.

A written request, specifically identifying the records being requested, must be received from an approved representative. The request may be granted unless the release of the records would foreseeably result in harm to any person, would present a security risk to any institution or other facility of the DRC, or would materially interfere with the achievement of a fair parole hearing. Prior to the release of any non-public parole board record, the records shall be reviewed by the parole board representative to determine if these risks are present. The records shall also be reviewed and not released if a crime victim is identified or statements are made by informants, prosecuting attorneys, and judges concerning the inmate, or information about witness protection, inmate separation, juvenile history, or diagnostic and testing of the inmate. If the non-public portion of the record is redacted then the record shall be released.

C. Pre-Sentence and Offender Background Investigations

Criminal Rule 32.2 governs the circumstances in which a pre-sentence investigation report (PSI) is made and its disclosure by the trial court. Sections 2947.06 and 2951.03 of the Revised Code elaborate on that rule. The PSI report is required to be sent to the institution to which the offender is committed. Sections 2951.03 and 5120.16 also authorize the preparation of an offender background investigation by DRC when a PSI report has not been prepared. It allows the DRC to use any PSI/offender background investigation for penological or rehabilitative purposes. It further states that the department may disclose the reports to courts, law enforcement agencies, community based correctional facilities, halfway houses, and medical, mental health, and substance abuse providers. In this regard, it requires the DRC to make the disclosure in a manner calculated to maintain the report's confidentiality. It directs the DRC to redact the victim impact section and any information identifying a witness when disclosing to a community based correctional facility, a halfway house, or a medical, mental health, or substance abuse provider.

D. Freedom of Information Act

The Federal Freedom of Information Act does not apply to state agencies or officers. Nonetheless, if the information requested is public under section 149.43 of the Ohio Revised Code, it may be disclosed in accordance with the terms of the statute.

E. For a listing of DRC records that are public records and non-public records under Revised Code section 149.43 see Administrative Rule 5120-9-49, Public Records. Pursuant to paragraphs (C), (D), and (F) of that rule, non-public records of the DRC may be released in accordance with that rule.

Note: Division of Legal Services will help you in understanding and responding to these and other record request situations. For assistance call (614) 752-1767.