

 Corrections and Community Supervision DIRECTIVE	TITLE FOIL/Access to Departmental Records		NO. 2010
			DATE 06/03/2019
SUPERSEDES DIR. #2010 Dtd. 11/28/17	DISTRIBUTION A B	PAGES PAGE 1 OF 7	DATE LAST REVISED
REFERENCES (Include but are not limited to) Public Officers Law and other statutes cited within; 9 NYCRR Part 8000.5; 7 NYCRR Part 5; for ACA Expected Practices, see appendix; Directives #0008, #0401, #2009, #2012, #2014, #4483, #4804; HSPM 4.04	APPROVING AUTHORITY 		

I. INTRODUCTION: It is the purpose of this directive to outline responsibilities and procedures for access to and release of Department records in accordance with the Freedom of Information Law (FOIL). The term “Department record” means any record, in any physical form, that is maintained by the Department. FOIL does not require an agency to create any new records. Rather, this law requires that an agency determine whether there are any existing records that are responsive to a request, and, if so, whether such records must be released in whole or in part.

Other Records Access Provisions: See Directives #2012, “Release of Employee Personnel and Payroll Information,” for access to employee records; #2014, “Access to Records for Parole Interviews, Hearings, or Appeals,” for access pursuant to 9 NYCRR § 8000.5; #2009, “Maintaining Logs - Dissemination of Criminal History Record Information”; #0401, “Release of Information to the News Media”; #4804, “Academic Education Program Policies”; and Health Service Policy Manual Item #4.04, “Access, Use, and Disclosure of Protected Health Information.”

II. DESIGNATION OF CUSTODIANS/RECORDS ACCESS OFFICERS

- A. The Department's Records Access and Privacy Compliance Officer is designated by the Department's Deputy Commissioner and Counsel. He or she is responsible for coordinating the Department's response to requests for records pursuant to FOIL and acting as the Records Access Officer for Central Office records.
- B. Custodians of Departmental records are designated to act as Assistant Records Access Officers and Deputy Privacy Compliance Officers. Unless otherwise specified, the Superintendent of a correctional facility is the custodian of all Departmental records located at the facility. The Regional Directors for Community Supervision are the custodians of all Departmental records maintained within their respective regions.

III. DUTIES OF CUSTODIANS/RECORDS ACCESS OFFICERS:

- A. Generally: Custodians/Assistant Records Access Officers are responsible for receiving requests for Departmental records, assisting requesters in locating records, making determinations regarding disclosure, certifying disclosed records as true copies when requested, and otherwise implementing and complying with the specific duties and procedures set forth in this directive.
- B. Record of Disclosures: Each custodian/Assistant Records Access Officer shall keep a record of each request to include date received, their acknowledgment (if any), their determination, and the dates thereof.

That person shall also maintain a system for identifying what records, or portions thereof, were disclosed by either: (1) making and retaining copies of the records disclosed, (2) making a notation in each disclosed document, or (3) creating some other mechanism sufficient to assist the Records Access Officer or the Office of Counsel to determine which of the records in a particular file have been disclosed.

Whenever a document contains portions that are exempt from disclosure, an exact copy of the document as edited and disseminated shall be kept by the custodian/Assistant Records Access Officer for reference in the event of an administrative appeal or litigation.

Disclosure of criminal history information outside the Department must be recorded in a special dissemination log (see Directive #2009).

IV. REQUEST/ACCESS PROCEDURES

- A. Generally: Requests to view or obtain copies of records shall be made in writing. Requests may be submitted electronically at: openfoil.ny.gov. The request must reasonably describe the record sought. Requests sent by mail should be addressed to the custodian or Assistant Records Access Officer believed to be in possession of the desired records. Requests for records held at a facility/field office should be addressed to the Superintendent/Regional Director of that facility/region. Requests for records held at Central Office or at an unknown location should be addressed to the Assistant Records Access Officer, Department of Corrections and Community Supervision, 1220 Washington Avenue, Albany, NY, 12226-2050.

Requests to view and produce records shall be scheduled only on Monday through Friday, except public holidays, at DOCCS Central Office between 8 a.m. and 4 p.m., and at correctional facilities/field offices between 8:30 a.m. and 3:30 p.m.

- B. Local Procedures: A Superintendent may establish alternate procedures for handling inmate requests with the permission of the Department's Record Access Officer. Each Superintendent shall determine specific local procedures, consistent with this directive, for handling requests by attorneys, former inmates, and others.

Whenever a Superintendent/Regional Director believes that it is more appropriate for the Department to handle a request for records at Central Office, he or she shall forward the request, together with his or her comments and copies of all of the documents which have been requested, to the Department's Assistant Records Access Officer.

- C. Transferred Records: Requests for records which have been transferred, or are maintained at another location, shall be forwarded as appropriate. If the location of the records is not known, the request shall be forwarded to the Central Office Assistant Records Access Officer. Notice shall be sent to the requester when a request has been forwarded.

V. SEARCH/DISCLOSURE PROCEDURES

- A. Training: To schedule FOIL training for Department staff on standards of disclosure, and reviewing and redacting records, contact the Department's Records Access Officer or the Central Office FOIL Unit.

B. Time Requirements

1. The custodian/Records Access Officer must acknowledge all FOIL requests in writing within five business days of receipt. Prior to acknowledging a request, the custodian/Records Access Officer should search for the requested record and provide a final response, if possible.
2. If circumstances prevent a determination or disclosure to the requester within 20 business days from the date of the acknowledgment of the receipt of the request, the Assistant Records Access Officer shall advise the requester in writing of both the reason for the inability to grant the request within 20 business days and a date certain, within a reasonable time period, when the request will be granted in whole or in part.

C. Obtaining Records: Program areas are required to assist the custodian/Records Access Officer with a search for records and must provide complete, unredacted records to the custodian/Records Access Officer expeditiously. Any concerns regarding whether a record should be released must be expressed to the custodian when records are provided. If a program area is unresponsive or refuses to provide records, the Deputy Superintendent or Bureau Chief responsible for the supervision of the program area should be notified. If a resolution is not reached, the Central Office FOIL Unit should be contacted to provide assistance.

D. Issuing a Response: The custodian/Records Access Officer shall determine whether records are releasable and whether disclosure can be made in whole or in part, and provide an appropriate response. If a record is not found, the Records Access Officer must certify that the record does not exist, cannot be found after a diligent search, or is in the custody of another specified agency.

E. Standards of Disclosure: Requesters are entitled to all records of the Department except those records or portions thereof which are exempt pursuant to Public Officers Law § 87(2).

F. Discretionary Disclosure of Exempt Records

1. A record's possible exemption from public disclosure under the Public Officers Law does not necessarily prohibit its disclosure. The Department has the discretion to disclose all records except when specifically prohibited by state or federal statute.
2. When the Department receives a request for records which it may disclose at its discretion, the custodian should determine whether the request is for a legitimate governmental or other purpose. If the custodian is uncertain whether the purpose is valid or whether the request should be honored, he or she should consult with the facility Superintendent or the Deputy Commissioner with jurisdiction over the subject matter of the record in question.
3. The Office of Counsel should be consulted if there are questions about legal restrictions on disclosure.

G. Fees

1. The fee for photocopies of a Department record shall be 25 cents per page. No fees should be charged for review of records, and no fees should be charged for postage.

Scanned or other digital records shall be provided by email or on an electronic medium (such as CD or DVD) whenever possible. No fee may be charged for digital records.

2. For data extractions (e.g., data compilations created by the Office of Information Technology Services (ITS) or Program Planning, Research, and Evaluation), the agency may charge the actual cost of reproducing a record if over two hours of staff time is required to make the records available, or an outside professional service must be retained to prepare a copy of the requested record. Video and audio records are not included in this category (see Public Officers Law Section 87(1)(c) for fee provisions).
3. The fee for video and audio records shall be no greater than \$3.00 or the cost of the storage medium, for each CD, DVD, cassette, or other tool, as determined by the Superintendent or designee. Any increase from this cost determination must be approved by the Central Office FOIL Unit.
4. The fee shall be waived when the documents are being provided to an agency of the Federal, State, or local government and when the documents are being provided to a public defender who is representing an inmate accused of a crime committed during his or her incarceration. The fee may be waived in the discretion of the custodian/Records Access Officer when circumstances warrant it.
5. An invoice should be issued when the Assistant Records Access Officer provides records, and fees due should be tracked by request. If a requester previously failed to pay for records within a reasonable time, the custodian may refuse to process future requests. Requesters should be notified in advance if records exceed 50 pages, when they have not specified an amount they are willing to pay for records (fees for inmate requests must be collected prior to the release of records).
6. Upon receipt of fees, the custodian/Assistant Records Access Officer should forward the payment to the Business Office for processing. For Community Supervision Area Offices, payment should be forwarded to the Central Office Finance Unit.

VI. APPEALS/CHALLENGES

A. Appeals

1. Any person whose application to inspect or obtain a copy of a Department record has been denied in whole or in part (including deletions) may, within 30 days of such denial, appeal to:
FOIL Appeals, The Office of Counsel
Department of Corrections and Community Supervision
1220 Washington Avenue, Albany, NY, 12226-2050
2. The time for deciding an appeal shall commence upon receipt of a written appeal that identifies:
 - a. The record that is the subject of the appeal;
 - b. The date and location of the request for access to that record; and

- c. The name and return address of the appellant.
 3. The FOIL Appeals Officer shall decide the appeal within ten business days of receipt of the appeal, and:
 - a. Provide, or direct the custodian of the record to provide access, in whole or in part; or
 - b. Fully explain in writing the factual and statutory reasons for further denial.
 4. The Office of Counsel shall forward a copy of each appeal, and a copy of each ensuing decision to the Committee on Open Government.
- B. Challenge to Accuracy: If the completeness or accuracy of any item of information contained in the personal history or correctional supervision history portion of the record of an inmate is disputed by the inmate, the inmate or his attorney shall follow the procedures outlined in 7 NYCRR §§ 5.50, 5.51, and 5.52.

VII. SPECIAL PROCEDURES

- A. DCJS Summary Case History ("Rap" Sheet): The Department of Corrections and Community Supervision (DOCCS) is prohibited from disseminating "rap" sheets prepared by either the New York State Division of Criminal Justice Services (DCJS) or the Federal Bureau of Investigation (FBI) to any person not specified below. Inmates or their attorneys should be advised to communicate directly with DCJS or the FBI.
- B. Youthful Offender and Juvenile Delinquent Records: Records relating to youthful offenders or juvenile delinquents are normally considered confidential (Criminal Procedure Law Section 720.35). These records shall not be released to any outside individual or agency except the Board of Parole. Other exceptions shall be cleared with the Office of Counsel. These records may be disclosed to the individuals themselves, or the inmate's attorney, and certain other parties with proper authorization..
- C. Pre-Sentence Report: The Department is prohibited from releasing a Pre-Sentence Report by Criminal Procedure Law Section 390.50, except when specifically authorized by law (see, for example, Criminal Procedure Law § 390.50(2)(a)). Any questions about release of the Pre-Sentence Report should be directed to the Office of Counsel.
- D. Medical Records (Medical Health Records of Individuals): Medical records must be requested in accordance with Health Services Policy Manual Item #4.04. Requests for medical records of individuals shall be in writing and addressed to the Nurse Administrator of the treating facility. Where health records are sought because of their use in a collateral proceeding (such as a disciplinary hearing or Parole Board interview), they may be released through FOIL. A valid HIPAA authorization is required for either request.
- E. Mental Health Records: Requests for mental health records must be made to the Office of Mental Health, which will not accept forwarded requests. Requesters should be directed to resubmit a request to the facility/Satellite Mental Health Unit or to the Office of Mental Health, Bureau of Forensic Services, 44 Holland Avenue, Albany, NY 12229.
- F. Drug and Alcohol Records: The Department shall not release drug and alcohol records through FOIL without a signed release (see [Form #1080](#), "Release of Drug and Alcohol Abuse Records").

- G. Requests from Immediate Family: The immediate family of an inmate shall be entitled to the following information without authorization from the inmate: Correctional facility in which confined, general state of health, nature of injury or illness, date of death, cause of death, and Departmental actions regarding release and confinement.

Appendix

ACA Expected Practices

- 2-1079
- 2-1126
- 2-1128
- 2-1130
- 2-CO-1A-26
- 2-CO-1E-01
- 2-CO-1E-06
- 2-CO-1E-07
- 2-CO-1E-08
- 4-4019
- 4-4095
- 4-4098
- 4-4099
- 4-4396
- 4-4414
- 4-4415
- 4-APPFS-1B-10
- 4-APPFS-1C-01
- 4-APPFS-3C-03
- 4-JCF-4C-09
- 4-JCF-4C-31
- 4-JCF-4C-33
- 4-JCF-4D-08
- 4-JCF-6F-01
- 4-JCF-6G-05