

 Corrections and Community Supervision DIRECTIVE	TITLE Access to Records for Parole Interviews, Hearings, or Appeals		NO. 2014
			DATE 07/07/2020
SUPERSEDES DIR. #2014 Dated 06/03/19	DISTRIBUTION A B	PAGES PAGE 1 OF 5	DATE LAST REVISED
REFERENCES (Include but are not limited to) NYS Executive Law §259-i(2)(c)(B); NYS Public Health Law §18; NYS Mental Hygiene Law §33.16(b); 9 NYCRR §§ 000.5, 8002.4(e); 7 NYCRR §§5.50, 5.51, 5.52; 42 U.S.C. §290dd-2; 42 C.F.R. §2.31; 45 C.F.R. §164.524; Directive #2010	APPROVING AUTHORITY 		

INTRODUCTION: This directive outlines the responsibilities and procedures for access to and release of the Department of Corrections and Community Supervision’s (DOCCS) records in accordance with 9 NYCRR §8000.5, “Parole Records.” This regulation does not require the Department to provide records that will not be reviewed by the Board or Hearing Officer. The Freedom of Information Law (FOIL), as discussed in Directive #2010, “FOIL/Access to Departmental Records,” does not apply to requests made pursuant to 9 NYCRR §8000.5.

I. DESIGNATION

- A. The Supervising Offender Rehabilitation Coordinator (SORC) responsible for overseeing an inmate’s counseling at a correctional facility, or the Senior Parole Officer (SPO) at a parole Area Office serving the locale where the parolee is confined in a city or county jail or correctional facility, is responsible for requests for that individual’s records made under 9 NYCRR §8000.5. The SORC or SPO is designated the records “Custodian” for the purposes of this directive.
- B. Processing and responding to requests may be delegated to any individual within the facility or area office by the Superintendent or Bureau Chief as, necessary, so long as such designation does not delay a timely response. The SORC or SPO will remain responsible for answering any inquiries about the status of a request, regardless of delegation.

II. RECORDS COVERED

- A. Only those records available to, or considered by, the Board of Parole or Hearing Officer for the following proceedings may be provided, subject to section III-B. Such records shall be requested:
 - 1. Prior to a scheduled appearance before the Board;
 - 2. Prior to a scheduled appearance before an authorized Hearing Officer for a revocation proceeding; or
 - 3. Prior to the timely perfection of an administrative appeal of a final decision of the Board.
- B. Access shall not be granted to the following records, whether or not they were considered in the above proceedings:
 - 1. Diagnostic opinions which, if known to the subject, could lead to a serious disruption of his or her institutional program or supervision;

2. Materials which would reveal sources of information obtained upon a promise of confidentiality;
 3. Any information which, if disclosed, might result in harm, physical or otherwise, to any person;
 4. Any information which may be used, alone or in conjunction with other information, to identify a private individual who has submitted a statement regarding the release of an individual;
 5. Any victim impact statement for which disclosure is not authorized pursuant to 9 NYCRR §8002.4;
 6. Reports, documents, and materials provided by other agencies, including but not limited to, probation reports, drug abuse and alcoholism rehabilitation records, psychiatric materials, and the Division of Criminal Justice Services (DCJS) report;
 7. Any information for which the administrative burden of providing access would be unreasonable in comparison to the potential benefit of disclosure; and
 8. Records of information prohibited from release by State or Federal law. This includes Criminal History Record Information (CHRI), Pre-Sentence Reports (PSR), personnel records of Correction Officers, and information which could identify the victim of a sex crime, among others.
- C. Access to any record or information not made available pursuant to this directive may be granted at the discretion of the Commissioner, Board of Parole Chairperson, or designee, upon good cause shown.
- D. Special Considerations
1. **Authorizations:** All requests submitted by an attorney on behalf of an inmate or parolee seeking access to records covered under this directive must be accompanied by a signed authorization from such inmate or parolee, in which a waiver of his or her privacy interest is clearly stated.
 2. **Medical Records:** The Board of Parole may consider the medical and mental health of inmates eligible for release to community supervision. Copies of medical records included in the file reviewed by the Board of Parole or at a revocation proceeding may only be accessed if the request is accompanied by a valid signed Health Insurance Portability and Accountability Act (HIPAA) authorization (see 45 C.F.R. §164.524, NYS Public Health Law §18).
 3. **Mental Health Records:** Typically, mental health records must be requested from the Office of Mental Health. However, when such records or information are provided to the Board of Parole or to a Hearing Officer in revocation proceedings, they may be accessed if a valid signed HIPAA authorization is provided (see NYS Mental Hygiene Law §33.16(b)).
 4. **Substance Abuse Treatment Records:** Federal law prohibits the release of substance abuse treatment records (see 42 U.S.C. §290dd-2). Access to such records may be granted only if a signed authorization accompanies the request and such authorization conforms with 42 C.F.R. §2.31. DOCCS [Form #1080](#), "Release of Drug and Alcohol Abuse Records," may be utilized.

5. **Victim Impact Statements:** Records of victim impact meetings or victim impact statements are confidential, unless expressly authorized by the victim or a court order (see 9 NYCRR §8002.4(e)). This encompasses all submissions by a deceased victim's family members. DOCCS staff may contact the Office of Victim Assistance with questions regarding what records qualify in a particular case.
6. **Community Support/Opposition:** Identifying information, such as names and addresses, must be redacted prior to release of such records (see NYS Executive Law §259-i(2)(c)(B)). Any content which identifies the individual or is covered by Section II-B above must be redacted.
7. **District Attorney/Judge:** Submissions from the District Attorney or sentencing Judge should be released unless explicitly stated within the letter or noted on the record that the writer requested confidentiality. Information within a letter that is otherwise exempt pursuant to this section should be redacted (such a victim statements).
8. **Parole Board Report (PBR) and Parole Board Criminal History Report (PBCHR):** The Confidential section of the PBR and the PBCHR are not accessible, unless access is granted pursuant to Section II-C.
9. **Inmate Submissions:** Any records submitted by the inmate, parolee, or an attorney for either may be accessed regardless of whether information contained would otherwise not be accessible.

NOTE: Records signed by the inmate or records, such as prior transcripts, where the inmate was present for the proceeding do not require redaction.

III. REQUEST/ACCESS PROCEDURES: Generally, requests must be made in writing to the Custodian no later than ten days before the scheduled proceeding and no earlier than one day after notice of the interview or revocation hearing is issued. Requests prior to Parole Board interviews are considered timely if they are submitted within four months of a scheduled interview. Requests in relation to an administrative appeal are considered timely if they are submitted after or with a notice of appeal and prior to the timely perfection of such appeal. Untimely or premature requests will not be processed. Requests must provide Custodians a reasonable amount of time to produce the records.

NOTE: If records for Parole Board interviews have not been compiled or completed when a request is received, the response may be delayed, or records may be provided on a rolling basis. Email submissions qualify as "in writing," and requests should be sent only by one medium (email, letter, or fax).

A. Requests must include the following information:

1. Name and Department Identification Number (DIN) of the inmate or parolee;
2. The proceeding for which records are sought;
3. The scheduled date of the proceeding;
4. That the request is made pursuant to 9 NYCRR §8000.5 or for a proceeding outlined in Section III-A;
5. The records sought (access will be granted only to those records within the scope of Section III);

6. A signed authorization for release of records, including appropriate HIPAA or substance abuse treatment record authorizations, if necessary; and
7. Whether the access sought is for copies or for review of the records.
 - a. If a request seeks copies of records, it must also include either a maximum fee, a page count, or an acknowledgment that fees will be paid upon receipt of records.
 - b. If a request seeks to review records, it must state a preferred date and time and any dates (within business hours) that the requester is not available. The request should also specify the name of everyone that will be present for the review.
- B. Copies: Requesters may obtain copies of records at a cost not to exceed 25 cents per page. Records will be provided with an invoice for payment, when applicable (see Section V-B-5). Failure to submit payment within a reasonable amount of time will result in the refusal to process future requests under 9 NYCRR §8000.5, regardless of whether such requests require copies.
- C. Review: Requesters may request to review records at no cost. Review of records will take place no later than the day of the proceeding. Review will take place Monday through Friday, excluding public holidays, between the hours of 8:30 a.m. and 3:30 p.m. at the correctional facility or area office. Only attorneys licensed in the State of New York and in good standing and acting in an attorney/client relationship with the inmate or parolee; or a staff member of such attorney; or a student, under a student practice order, practicing under such attorney will be allowed to review records. Arrangements must be made in advance with the correctional facility or area office. Records which require redaction are not available for review, unless the appropriate copying fee is paid in advance.

IV. DUTIES OF CUSTODIAN OR DESIGNEE

- A. Processing Requests: Upon the receipt of a complete and timely request made in accordance with Section IV, the Custodian should acknowledge receipt of the request as soon as practical. All requests should be logged into the Case Management System (CMS) when they are received, and another entry should be made when access to records is provided. Each entry should include who made the request, the proceeding for which records were sought, and whether the request seeks copies or a review of the records. Any complications, such as a requester not appearing for a scheduled review, a request made by an unauthorized individual, an untimely request, or a failure to submit payment, should be noted in CMS.
 1. If a request is made to review records and the Custodian cannot accommodate the requested date and time, the Custodian must schedule a date and time as close to the preferred time as possible and submit a gate pass for the individuals identified in the request. The Custodian may request verification of an attorney's admission status or the employment status of any individual listed in the request.
 - a. Review of records may take place in a private space, as available, and the Custodian may remain present. However, security of the correctional facility or area office remains the highest priority and privacy accommodations are not required.

- b. No records that require redaction shall be made available for review. However, records that have been properly redacted may be made available if appropriate payment has been received.
 2. If a request seeks copies of records, the Custodian must prepare records and deliver them in a manner that will provide receipt of records no later than one day before the proceeding is scheduled to take place, however, every effort should be made to fulfill a request as soon as possible. Only final drafts of records should be provided. Redactions must be made to ensure that the protected information is not accessible. Whenever possible, the requester should be notified that delivery has been completed. If records are mailed, they should be sent via certified mail and receipt of delivery should be logged in CMS.
- B. Fees
 1. If records are stored electronically and may be provided electronically without printing, the Custodian may not charge a fee for records.
 2. Where the Custodian or designee chooses to provide records electronically (even if they must be scanned in), no fees may be charged. It is the Custodian's discretion whether records will be scanned or photocopied.
 3. If records must be photocopied, the Custodian may charge no more than 25 cents per page for pages not to exceed 9" by 14". The Custodian may waive fees at his or her discretion.
 4. No fees may be charged for postage or staff time taken to prepare a record.
 5. When copies of records are sent to an attorney, payment will be requested with delivery of the records by enclosing an invoice for any fees associated with production costs. If records exceed the maximum cost or page count stated in the request for access, the Custodian should contact the requester prior to copying the records, when possible, to discuss production and cost and provide an opportunity for the requester to revise their request.
 - a. If payment is not received within a reasonable amount of time (approximately 45 days), the Custodian may refuse to process any subsequent requests until payment is made.
 - b. The Department's Records Access Officer should be notified of any refusal to submit payment or refusal to process a request for prior non-payment. Such notification should be logged into CMS.
- C. 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 their attorney shall follow the procedures outlined in 7 NYCRR §§5.50, 5.51, and 5.52.