
 Corrections and Community Supervision DIRECTIVE	TITLE		NO. 2010
	FOIL/ Access to Departmental Records		DATE 11/28/2017
SUPERSEDES DIR# 2010 Dtd. 04/05/2016	DISTRIBUTION A B	PAGES PAGE 1 OF 12	DATE LAST REVISED 04/12/2018
REFERENCES (Include but are not limited to) See Section II.	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. See Directive #2012, "Release of Employee Personnel and Payroll Information," for access to employee records. See also related Directives #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." (Education Records: See also Employees' Manual Section 4, "Department Records and Statements.")

The Freedom of Information Law does not require an agency to create any new records for the purpose of responding to a request for 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.

II. REFERENCES

- 7NYCRR Part 5
- Directives #0008, #0401, #2009, #2012, #4483 and #4804
- DOCCS Employees' Manual
- Health Services Policy Manual 4.04
- Public Officer's Law
- Correction Law §147
- Public Health Law Section 18
- NYS Freedom of Information Law
- Criminal Procedure Law
- Federal Regulations 42 CFR 2.11
- Family Educational Rights and Privacy Act
- NYS Mental Hygiene Law
- Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- ACA Standards 4-4019, 4-4095, 4-4098; 4-4099; 4-4396; 4-4414, 4-4415

III. 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 the New York State Freedom of Information Law.
- 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. Unless otherwise specified, the Department's Records Access and Privacy Compliance Officer shall also perform the functions and duties of an Assistant Records Officer and Deputy Compliance Officer, as set forth in this directive, with regard to Central Office records.

IV. 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. Subject Matter List: The Department's Records Access and Privacy Compliance Officer shall maintain a reasonably detailed subject matter list of all records maintained by the Department. The subject matter list shall be updated annually.
- C. Website: The Records Access Officer shall ensure that the agency shall post its current list on its website and this posting shall be linked to the website of the Committee on Open Government. The website shall include, at minimum, contact information for the persons from whom records of the Agency may be obtained, the times and places such records are available for inspection and copying, and information on how to request records in person, by mail, or by e-mail.
- D. 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 Counsel to determine which of the records in a particular file have been disclosed.

Whenever a particular 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 administrative appeal or litigation.

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

V. REQUEST/ACCESS PROCEDURES

- A. Generally: Requests to view or obtain copies of records shall be made in writing. The request must reasonably describe the record sought and it should be addressed to the custodian or Assistant Records Access Officer believed to be in possession of the desired records. Except for the special facility procedures set forth below, 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 accepted Monday through Friday, except public holidays, at DOCCS Central Office between the hours of 8 a.m. and 4 p.m., and at correctional facilities/field offices between the hours of 8:30 a.m. and 3:30 p.m.

Requests for records shall also be accepted electronically via the Department's website or by e-mail to foil@doccs.ny.gov.

B. Special Procedures

1. **Non-Medical Records**: Requests by inmates for access to non-medical records shall be addressed to the facility Assistant Records Access Officer.
2. **Medical Records**: Requests by inmates for access to their medical records shall be referred to the senior medical staff person for review and determination in accordance with Health Services Policy Manual, Item #4.04. See Section VIII-D below for special procedures.
3. **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.
4. **Transferred Records**: Requests for records which have been transferred, or are at Central Office, 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.
5. **Community Supervision Records**: Requests for Community Supervision records should be handled by the custodian/Assistant Records Access Officer at the facility/field office where the records are maintained.
6. **Parole Board Records**: A request for Parole Board records that are not maintained at the facility or area office should be forwarded to the Central Office Assistant Records Access Officer.
7. **Referrals to Central Office**: Whenever a Superintendent/Regional Director believes that the request for records is of such a nature that it is more appropriate for the Department to handle the request 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.

VI. SEARCH/DISCLOSURE PROCEDURES

- A. Time Requirements: Within five business days after receipt of a written request for a Department record, the custodian/Records Access Officer shall search for the requested record and shall respond as provided for in subsections 1, 2 or 3 below:
1. Record is Found: If the record is available, the custodian/Assistant Access Officer shall determine whether disclosure can be made in whole or in part and shall either:
 - a. Produce the record for inspection;
 - b. Make a copy of the record upon payment of the appropriate fee, and, if requested, certify it as a true copy;
 - c. Make arrangements with the requester for inspection or copying at a later time;
 - d. Mail copies (certified if requested) of the record to the requester or advise the requester that copies will be sent upon payment of the appropriate fee (unless waived);
 - e. If agreeable to the requester, provide the information from the record rather than a copy of the record;
 - f. Give the requester a copy of a redacted record (in the event that certain information in the record cannot be disclosed) citing each relevant ground for the deletions specified in "Standards of Disclosure" (below), and advise the requester of the right to appeal; or
 - g. Deny access to the record, or a portion thereof citing each relevant ground specified in "Standards of Disclosure" (below) and advise the requester of the right to appeal.
 2. Record is Not Found: If the custodian/Records Access Officer determines, after a diligent search, that the record is not in Department's custody, he or she shall certify:
 - a. That the record does not exist, or after a diligent search, that the record cannot be found; or
 - b. That the record is in the custody of another specified agency.
 3. A request not answered in five business days may be construed as a denial which can be appealed. However, if the request cannot be completed within five business days, the Assistant Records Access Officer shall send a written acknowledgment of the receipt of the request advising the requester of the approximate date when the request will be granted or denied. 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 requestor 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.

- B. Standards of Disclosure: Requesters are entitled to all records of the Department except those records or portions thereof which:
1. Are specifically exempted from disclosure by State or Federal statute (Public Officers Law Section 87(2)(a)) (see the sub-sections relating to “rap” sheets, youthful offender, probation, medical, drug abuse and alcohol abuse records - Section VIII below);
 2. If disclosed, would constitute an unwarranted invasion of personal privacy (Public Officers Law Section 87(2)(b)) (see sub-section C below);
 3. If disclosed, would impair present or imminent contract awards or collective bargaining negotiations (Public Officer Law Section 87(2)(c));
 4. Are trade secrets or are maintained for the regulations of commercial enterprise which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise (Public Officers Law Section 87(2)(d)).
 5. Are compiled for law enforcement purposes and which, if disclosed, would:
 - a. Interfere with law enforcement investigations or judicial proceedings;
 - b. Deprive a person of a right to a fair trial or impartial adjudication;
 - c. Identify a confidential source or disclose confidential information relating to a criminal investigation; or
 - d. Reveal criminal investigation techniques or procedures, except routine techniques and procedures;
 6. If disclosed, would endanger the life or safety of any person (Public Officers Law Section 87(2)(f));
 7. Are inter-agency or intra-agency materials which are not (Public Officers Law Section 87(2)(g)):
 - a. Statistical tabulations or data;
 - b. Factual data;
 - c. Instructions to staff that affect the public;
 - d. Final agency policy or determinations; or
 - e. External audits including, but not limited to, audits performed by the Comptroller and the Federal Government.
 8. Are examination questions or answers which are requested prior to the final administration of such questions (Public Officers Law Section 87(2)(h));
 9. If disclosed would jeopardize an agency’s capacity to guarantee the security of its information technology assets encompassing both electronic information systems and infrastructures (Public Officers Law Section 87(2)(i));
 10. Are patient records concerning mental disability or medical records where such access is not otherwise required by law (Public Officers Law Section 95(6)(b));
 11. Personal Information pertaining to the incarceration of an inmate at a State correctional facility which is evaluative in nature or which, if access was provided, could endanger the life or safety of such person, unless such access is otherwise permitted by law or Court Order (Public Officers Law Section 95(6)(c)).

C. Unwarranted Invasion of Privacy

1. An unwarranted invasion of personal privacy is defined in Public Officers Law Section 89(2), and includes, but shall not be limited to:
 - a. Disclosure of employment, medical and credit histories, and personal references of employees and applicants for employment;
 - b. Disclosure of information of a personal nature when such disclosure would result in economic or personal hardship to the subject and such information is not relevant to the work of the party requesting it;
 - c. Disclosure of information of a personal nature reported in confidence to the Department and not relevant to the ordinary work of the Department;
 - d. Disclosure of information of a personal nature contained in a worker's compensation record; or
 - e. Home address, social security numbers, personal telephone numbers, or information concerning family members of employees shall not be disclosed except as otherwise permitted by law or Court Order.
2. It shall not be considered an unwarranted invasion of personal privacy when:
 - a. Identifying details are deleted;
 - b. The person to whom a record pertains consents in writing to the disclosure. If this pertains to medical or mental health files, the written consent must be in the form of a proper authorization that is compliant with the NYS Mental Hygiene Law and/or Health Insurance Portability and Accountability Act of 1996 (HIPAA); or
 - c. Upon presenting reasonable proof of identity, a person seeks access to the record pertaining to him or herself.

D. Discretionary Disclosure of Exempt Records

1. The fact that a record is exempt from public disclosure under the Public Officers Law does not necessarily mean that it is prohibited by that Law from being disclosed. The Department has the discretion to disclose all records except those which are specifically prohibited from being disclosed pursuant to other State or Federal law.
2. When the Department receives a request for records which it may disclose at its discretion, a determination should be made as to whether or not the request is for a legitimate governmental or other purpose. If the individual who receives the request is uncertain whether the purpose is valid or whether the request should be honored, he or she should consult with his or her appropriate supervisor. Superintendents, if uncertain about whether a record should be disclosed, should consult with the Deputy Commissioner who has jurisdiction over the subject matter of the record in question.
3. Counsel should be consulted if there is a question about whether there are any legal restrictions on disclosure.

E. Fees

1. The Department is not permitted to charge any fee for searching its records, for making them available for inspection (unless redactions are required), or for certification of copies. The fee for photocopies of a Department record shall be 25 cents per page, for a paper copy, not exceeding "9x14", or the actual cost of reproducing the record. Postage may be charged when copies are mailed.
2. For non-paper records (e.g., electronic records extracted by the Office of Information Technology Services (ITS) or Program, Planning, and Research), 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 needs to be retained to prepare a copy of the requested record. Video and audio records are not included in this category. If determining the actual cost of reproducing a record, an agency may include only (see Public Officers Law Section 87(1)(c):
 - a. An amount equal to the hourly salary attributed to the lowest paid agency employee who has the necessary skill required to prepare a copy of the requested record;
 - b. The actual cost of the storage devices or media provided to the person making the request in complying with such request;
 - c. The actual cost to the agency of engaging an outside professional service to prepare a copy of a record, but only when an agency's information technology equipment is inadequate to prepare a copy, if such service is used to prepare a copy; and
 - d. Preparing a copy shall not include search time or administrative costs. A person requesting a record shall be informed of the estimated cost of preparing a copy of the record.
3. The fee for video and audio records shall be limited to a rate of 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 deviation 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. Depending upon the relationship between the Department and the person requesting the records, the Assistant Records Access Officer may either provide the records with a bill for fees due, require assurance of payment before copies of the records are delivered, or require payment in advance of delivery.
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.

VII. 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
(Phone: 518-457-0176)

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 Counsel shall make a decision regarding the appeal within ten business days of receipt of the appeal. Specifically, the Counsel shall:
 - 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. 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

1. 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 shall convey such dispute to the custodian/Records Access Officer who shall, within a reasonable period of time, investigate the accuracy and completeness of the information, unless he or she has reasonable grounds to believe that the dispute by the inmate is frivolous. If the record in dispute is one which has been received from another governmental agency, then the custodian shall direct the inmate to make his or her challenge to such agency.
2. If the custodian's investigation and determination does not resolve the dispute, the inmate may appeal, in writing, to the Office of Special Investigations, Department of Corrections and Community Supervision, 1220 Washington Avenue, Albany, NY, 12226-2050. The Office of Special Investigations (OSI) shall review the matter, initiate any necessary remedial action, and promptly notify the inmate and the custodian of the determination.
3. Any official making corrections under this section shall provide corrected data to all known recipients of erroneous or incomplete information and shall, if requested, provide the inmate whose record has been corrected with the names of those recipients.

VIII. INMATE RECORDS - SPECIAL PROCEDURES**A. DCJS Summary Case History ("Rap" sheet)**

1. 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.
2. The "rap sheet" or the information contained therein may be released to United States Immigration Authorities, or entities involved in reporting alien status to such authorities, as authorized by Correction Law Section 147. No other release shall be authorized unless approval is received by the Office of Counsel.

B. Youthful Offender and Juvenile Delinquency Records: Records relating to one sentenced as a youthful offender or juvenile delinquent 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 pursuant to the provisions set forth in "Special Procedures," (Section V-B). These records, or some of them, may also be disclosed to the inmate's attorney and certain other parties upon proper authorization by the individual or someone authorized to act on his or her behalf. No record should be released pursuant to such authorization unless cleared with the Office of Counsel.**C. Pre-Sentence Report:**

1. The Department is prohibited from releasing a pre-sentence report by Criminal Procedure Law Section 390.50 except in the following circumstances:
 - a. Provided to an inmate by the sentencing court through an Offender Rehabilitation Coordinator in connection with an inmate's appearance before a Parole Board or an appeal of denial of parole pursuant to Criminal Procedure Law Section 390.50(2)(a).
 - b. For use by entities exercising their statutory functions under Article 10 of the Mental Hygiene Law.
 - c. To the Immigration and Customs Enforcement (ICE) service, as authorized by Correction Law Section 147, in connection with an investigation into and possible deportation of a foreign-born inmate.
 - d. To an attorney in connection with an inmate's application for Executive Clemency, when so authorized by a sentencing court.
2. Any other release of the pre-sentence report must be approved by the Office of Counsel

D. Medical Records (medical health records of individuals)

1. Inmate and Third Party Requests: Medical records of individuals can be requested under Public Officers Law 87 (FOIL) or Public Health Law Section 18 and HIPAA. Requests for medical records of individuals shall be in writing and addressed to the Nurse Administrator or Records Access Officer.

- a. A valid authorization that complies with HIPAA is needed to release medical records to a third party.
 2. All requests for medical records received by the Records Access Officer must be acknowledged by the Records Access Officer within five business days of receipt, informing the requester that their request is being forwarded to and processed by the Nurse Administrator, consistent with existing privacy requirements as outlined in the Department's Health Services Policy Manual Item #4.04.
- E. Mental Health Records: Requests for mental health records must be denied because such records are not maintained by the Department. The Office of Mental Health will not accept forwarded requests. Requestors 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
1. The Department shall not release drug and alcohol records except pursuant to:
 - a. A Court Order (an ordinary subpoena is not valid);
 - b. A request for such records by a hospital, physician or other health provider in the event of a medical emergency (in which case, a signed authorization shall not be required);
 - c. A request for certain drug and alcohol abuse records to which the Federal Regulations 42 CFR 2.11 et seq. do not apply (assume Federal regulations do apply unless the Office of Counsel advises otherwise); or
 - d. A signed release by the subject of the records (as explained below).
 2. An inmate, or former inmate, shall authorize the release of drug and alcohol records by signing either Departmental [Form #1079](#), "Release of Drug and Alcohol Abuse Records (Department Request)," or [Form #1080](#), "Release of Drug and Alcohol Abuse Records," or by providing the Department with a form containing substantially all of the information as is provided by either [Form #1079](#) or [Form #1080](#).
 3. [Form #1080](#) shall be used whenever an inmate, or former inmate, requests the disclosure of drug and alcohol abuse information. [Form #1079](#) shall be used whenever the Department wants to condition a privilege on the signing of a release.
 4. Send [Form #1081](#), "Notice to Recipient of Drug and/or Alcohol Abuse Treatment Information," whenever alcohol or drug records are disclosed pursuant to a signed release.
- 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.

- H. Miscellaneous: All other records which have been sealed by a Court, or which in the future may become confidential either pursuant to statute, regulation, or Court Order, shall not be released. Upon receipt of a subpoena or other compulsory court process demanding delivery of said records, the Office of Counsel shall be advised. No such record shall be released without the approval of the Office of Counsel.
- I. Disciplinary Hearing Tapes
1. An inmate who has been the subject of a disciplinary hearing may be allowed, upon request, to review a non-confidential tape of the hearing. (Portions of the hearing tape where confidential testimony has been provided will be withheld.)
 2. An inmate who has requested and received approval for legal assistance from another inmate (per Directive #4483, "Law Libraries, Inmate Legal Assistance and Notary Public Services,") may give written consent for that legal assistant to also review a tape of the hearing.
Under such circumstances, the inmate legal assistant shall be given the same opportunity to listen to the hearing tape as is afforded the inmate subject *unless* the Deputy Superintendent for Security (DSS), or designee, denies access for a specific security reason.
 3. At facility discretion, arrangements shall be made for the subject inmate or approved inmate legal assistant to listen to the tape under employee supervision, or a copy may be made for temporary use without employee supervision. (As a general rule, the inmate should be allowed to review the tape for 72 hours in his or her cell.)
 4. If the inmate who has been the subject of a disciplinary hearing wishes to retain a copy of the tape of the hearing, he or she must pay for the tape. The tape will be stored in the inmate's secured personal property.
- J. Records of Inmates Released or Discharged: The Inmate Records Coordinator (IRC) shall:
1. Collect and consolidate into one complete folder all records from facility units which may hold relevant portions of the case history folder such as (but not limited to):

Chaplain	Security Services
Correspondence	Discipline Office
Education	Package Room
Guidance	ID Office
Health Services	State Shop
Temporary Release	Visiting Room
 2. Place folder in storage until inmate is returned or destruction date is reached. Upon notification that an inmate has been returned, forward the complete Inmate Case History Folder to the requesting facility IRC.
 3. Records for inmates from the NYC-based Work/Temporary Release facilities and/or other designated facilities may be transferred to a central depository location based on authorization and procedures promulgated by the Division of Support Operations.

NOTE: To protect the privacy of the individuals concerned as well as the security and integrity of inmate records, it is imperative that the handling of these records be limited to the Office of the Inmate Records Coordinator of each facility under the direction of the IRC. In the absence of IRC Office personnel, the facility Superintendent may authorize one employee (relegated to the position of S/G18 or higher) to provide this function.

No inmates may be utilized for movement of records without prior authorization from the Commissioner (or designee) following assurance by the facility Superintendent that strict supervision will be applied.

Photographs (Mug Shots): Photographs (mug shots) may be releasable documents either pursuant to FOIL or a media request. If a facility Superintendent receives a request from a media source, the matter shall be referred to the Office of Public Information. If the request is from any other outside source, the Superintendent must contact OSI via e-mail at SPECIALINVESTIGATIONS@DOCCS.NY.GOV to request authorization to release the inmate photo to such outside source. OSI will determine if the release of the photo is warranted and will advise the facility on how to proceed.