

Before the Iowa Public Information Board

In re the Matter of:

Rachel Bruns, Complainant

And Concerning:

Iowa Department of Public Health,
Respondent

Case Number: 21FC:0016

Final Report

COMES NOW Zachary S. Goodrich, Legal Counsel for the Iowa Public Information Board (IPIB) and submits this Final Report recommending dismissal of the complaint as successfully resolved through an informal resolution.

On March 5, 2021, Rachel Bruns filed formal complaint 21FC:0016 alleging that the Iowa Department of Public Health (IDPH) violated Iowa Code chapter 22.

Complainant alleged that IDPH failed to respond in a timely manner to a records request. The records request was submitted on December 15, 2020. Complainant sent a follow up message on February 9, 2021. At the time the complaint was filed, no response had been provided by IDPH.

On April 15, 2021, the IPIB voted to accept the complaint pursuant to Iowa Code section 23.8(1) and Iowa Administrative Rule 497-2.1(2)(a).

On June 3, 2021, the IDPH provided the responsive records to Ms. Bruns.

Pursuant to Iowa Code section 23.9, the parties negotiated and reached an informal resolution.

Ms. Bruns approved the Informal Resolution on June 24, 2021. IDPH approved the Informal Resolution on June 25, 2021. The IPIB approved the Informal Resolution on July 15, 2021.

The terms of the Informal Resolution are:

1. *IDPH acknowledges record requests for aggregated data related to maternal health matters including, but not limited to births, cesareans, and VBACs, are generally valid Iowa Code Chapter 22 requests.*
2. *Ms. Bruns acknowledges that certain requests for aggregated data may require redaction if the raw data violates IDPH's policy on release of small numbers, and that certain requests for aggregated data may be declined if data is not maintained in the format requested.*
3. *IDPH acknowledges that record requests must be responded to pursuant to Iowa Code chapter 22.*
4. *IDPH will develop a revised policy/procedure for how to process record requests in compliance with Iowa Code chapter 22. The revised policy/procedure will then be provided to the IPIB for approval.*

5. *Upon IPIB approval of the revised IDPH policy/procedure, the complaint shall be dismissed as successfully resolved.*

The revised IDPH records request policy directly addresses the issues in this complaint (see Attachment A).

The revisions include requirements for communicating with the requestor to (1) confirm receipt of the request within two business days, and (2) provide an update on the request no less than once every fifteen business days.

It is recommended that the IPIB approve the revised IDPH policy and dismiss this complaint as successfully resolved through an informal resolution.

Respectfully submitted this 19th day of August, 2021.



Zachary S. Goodrich
Legal Counsel

CERTIFICATE OF MAILING

This document was sent by electronic mail on the 10th day of August, 2021, to:

Rachel Bruns, Complainant
Heather Adams, counsel for IDPH

STATE OF IOWA
Department of Public Health

**Public Records
Policy # IM 11-04-015**

Purpose

The purpose of this policy is to establish the policy for all Iowa Department of Public Health (IDPH) employees responding to requests for public records.

Definitions

Confidential Record: A record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law.

Open Record: A record other than a confidential record as defined by applicable provisions of law.

Communications Director: The designated point of contact for all employees/supervisors who receive open records requests.

Public Records: All records, documents, tapes, or other information, stored or preserved in any medium, of or belonging to this state or any county, city, township, school corporation, political subdivision or any branch, department, board, bureau, commission, council, or committee of any of the foregoing. A public record includes both confidential and open records.

Records Officer: The Bureau of Policy, Communications and Human Resources chief is designated to oversee the records retention program, and serve as the primary point of contact with the state archives.

Policy

IDPH will preserve the integrity of public records, and respond to all requests for records in a timely, responsive and efficient manner in full compliance with applicable provisions of law. (Iowa Code chapter 22 – Examination of Public Records, and 641 Iowa Administrative Code 175.3).

Procedures

Employee

1. An employee may independently respond to a public records request if:
 - a. the record(s) requested are clearly open records subject to public inspection and copying; and
 - b. the response will be provided free of charge.

2. An employee receiving a request for public records shall notify their supervisor and the Communications Director if:
 - a. the record(s) requested may be or are confidential or contain confidential information; or
 - b. the requestor will be charged a fee for the records under the fee structure contained in this policy; or
 - c. the request is potentially controversial; or
 - d. the requestor specifically identifies the request as an open records request, a FOIA request, or a request for records under Iowa Code chapter 22; or
 - e. the request requires retrieval of e-mails of IDPH staff.

3. All employees shall reply in a timely, responsive and efficient manner in full compliance with this policy and applicable provisions of law.

Communications Director

1. The Communications Director shall assist the employee and supervisor, as needed, to reply in a timely, responsive and efficient manner in full compliance with this policy and applicable provisions of the law.
2. The Communication Director shall maintain a tracking system to monitor public records requests of which the Communication Director has been notified to ensure a timely response to the requests. This includes confirmation of request within 2 business days and contact with requestor once every 15 business days with a status update.
3. The Communications Director will contact legal counsel if there are questions concerning the scope of the request or if any questions arise as to the confidential nature of particular records addressed in the request.

Records Retention

1. Electronic public records in the custody of IDPH will be maintained and archived in accordance with the IDPH Electronic Records Retention Policy (#IM11-04-016) and E-mail Retention Policy (#IM 11-04-017).
2. Public records kept in paper form will be maintained and archived in accordance with Iowa Code chapter 305, the State of Iowa's Records Management Manual, and the policies set forth by the Records Commission.
3. The Bureau of Policy, Communications and Human Resources chief is designated as the department's records officer and shall oversee the records retention program, and serve as the primary point of contact with the state archives.

Availability of a Public Record

1. Open records will be available to the public during customary office hours, which are 8:00 a.m. to 4:30 p.m., Monday through Friday (except holidays). Immediate access to records may be affected by a good faith effort to verify the scope of the record request, locate the specific records requested, or to determine whether any of the records or information contained therein is confidential in nature.
2. IDPH will make every effort to provide the public with access to open records in a prompt and efficient manner. A response may be delayed to determine whether a record should be available for inspection and copying to the person requesting a right to do so. A delay should ordinarily not exceed ten business days and shall not exceed twenty calendar days from the date of the request. If IDPH discovers that circumstances will prolong a timely response, an IDPH employee must notify Communications Director who will promptly notify the requestor of the reason for the delay in access, provide an estimate of the length of that delay, and make alternate arrangements to provide the response in a manner that is satisfactory to the requestor and in compliance with relevant law.
3. Confidential records may be withheld, and confidential information within an otherwise open record may be withheld prior to a record's release for public examination and copying. If a confidential record is withheld from examination and copying or confidential information within an otherwise open record is redacted prior to release, IDPH will identify the document(s) and cite the applicable provision of law which supports the decision to withhold the confidential information from public examination.

Requests for a Public Record

1. Requests for access to a public record may be made in person, in writing, by telephone, or by electronic means. A person shall not be required to provide a reason for requesting an open record.
2. Electronic requests should be made through <https://idph.iowa.gov/Contact-Us/Open-Records-Requests>.
3. Requests by mail should be addressed to the specific program or, if unknown, to: Communications Director, Iowa Department of Public Health, 321 E. 12th Street, Des Moines, Iowa 50319. Requests by telephone should be directed to the Communications Director at 515-281-6693.

4. Persons who submit an e-mail, mail, or oral request for public records should also provide their name, address, and telephone number in order to facilitate effective communication with IDPH regarding the request. In addition, the requestor should identify the particular public record to which access is requested by name or description in order to efficiently identify the desired record. The requestor's description should:
 - a. Specify the particular type of record sought.
 - b. Specify the particular time period to be searched by providing a start and end date.
 - c. Specify the author and/or recipient of the record requested (to the extent possible).
 - d. Specify the record media to be searched (letters, memoranda, reports, recordings, etc.) – the requestor shall specify if the request applies to a record stored in electronic form. Provide any other pertinent information that will assist IDPH in locating the record requested. If the public request applies to a record that is stored in electronic form, the requestor shall list the search terms to be used to conduct the electronic search.

4. Upon receipt of a request for access to a public record, IDPH will promptly take all reasonable steps to preserve a public record while the request is pending.

5. Legal counsel may be contacted if there are questions concerning the scope of the request or whether a particular record is confidential.

Fees

1. The supervisor, in coordination with the Communications Director, will have oversight of all open records transactions involving a fee.

2. Fulfillment of a public records request may be contingent upon the payment of expenses to be incurred in fulfilling the request and such estimated expenses shall be communicated to the requester by IDPH upon receipt of the request.

3. Advance Deposits
 - a. Requestors are generally billed for fees after their request has been processed. However, if the request is estimated to take more than 4 staff hours to complete, IDPH may require payment in advance of processing.
 - b. If a requestor has an outstanding payment at the time of a new request, processing of that request may be delayed until the outstanding payment is made. IDPH may also request advance payment of the full amount of any estimated fee before a new request from that requestor is processed.

Fee Structure

Copying Records and Supervising Review of Records

1. Copies of public records using department equipment in excess of fifty (50) pages will be provided at \$.10 cents per page. Fifty or fewer copies will be provided free of charge.

2. Copying of records is \$32.45 per hour for services of clerical staff, if in excess of 2 hours. Copying of records that takes less than 2 hours will be provided free of charge.

3. Supervision of a non-Department employee's examination of records is \$32.45 per hour for services of clerical staff if in excess of 2 hours. Supervision that takes less than 2 hours will be provided free of charge.

Retrieval and Review of Requested Records

1. The cost of retrieval and review of records is the necessary hourly wage for services of clerical and professional staff needed to retrieve and review the records, if in excess of 4 hours for all staff involved in record retrieval and review. The charge for retrieval and review by clerical staff is \$32.45 per hour. The charge for retrieval and review by professional staff is \$65.09 per hour. Retrieval and review of records that takes less than 4 hours will be provided free of charge.

2. The Communications Director is responsible for responding to any request for information to be retrieved from electronic mail (e-mail). The request will be forwarded to the appropriate custodian of the e-mail storage server.

Postage

Postage charges may be added if records are mailed to the requestor and will reflect the actual postage cost.

Policy/Procedure Violations

Violations of this policy are grounds for disciplinary action, up to and including discharge.

Director's Signature

Date

4. There are no guarantees for getting a proclamation signed by the date you have requested, but I-GOV does try to honor requests. The earlier you make your request, the more likely you are to have your deadline met.
5. Once a general or formal proclamation is approved and scheduled, the Communications Director will alert the requestor, IDPH Bureau Chiefs, IDPH Division Directors and the IDPH Director.

8 OPEN (PUBLIC) RECORDS REQUESTS

Requests for access to a public record may be made in person, in writing, electronically by e-mail or the IDPH Open Records page, or by telephone. All Open Record requests will be processed in a timely manner. IDPH will confirm receipt of request within 2 business days and will contact requestor once every 15 business days with a status update. The following guidelines should be followed:

1. IDPH will preserve the integrity of public records, and respond to all requests for records in a timely, responsive and efficient manner in full compliance with applicable provisions of law. (Iowa Code chapter 22 – Examination of Public Records, and 641 Iowa Administrative Code 175.3).
2. Employee procedure:
 - a. An employee may independently respond to a public records request if:
 - i. the record(s) requested are clearly open records subject to public inspection and copying; and
 - ii. the response will be provided free of charge.
 - b. An employee receiving a request for public records shall notify their supervisor and the Communications Director if:
 - i. the record(s) requested may be or are confidential or contain confidential information; or
 - ii. the requestor will be charged a fee for the records under the fee structure contained in this policy; or
 - iii. the request is potentially controversial; or
 - iv. the requestor specifically identifies the request as an open records request, a FOIA request, or a request for records under Iowa Code chapter 22; or
 - v. the request requires retrieval of e-mails of IDPH staff.
3. For additional information, please see [Public Records](#) policy.

9 INTERNAL COMMUNICATIONS
