

**RULES AND REGULATIONS
PERTAINING TO ACCESS TO PUBLIC RECORDS
OF THE RHODE ISLAND DEPARTMENT OF HEALTH**

[R38-2-APRA]



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF HEALTH

July 2013

INTRODUCTION

These *Rules and Regulations Pertaining to Access to Public Records of the Rhode Island Department of Health* [R38-2-APRA] are promulgated¹ pursuant to the authority set forth in Chapter 38-2 of the General Laws of Rhode Island, as amended, and establish the procedures and methods for obtaining access to public records of the Rhode Island Department of Health.

These Regulations shall be liberally construed to further the fair, prompt, impartial and orderly access to public records as provided for in RIGL Chapter 38-2. To the extent that any part of these Regulations are inconsistent with the applicable law, the applicable law shall govern.

¹ Prior to June 2013, the requirements contained in these Regulations were included with the *Rules and Regulations of the Rhode Island Department of Health Pertaining to Practice and Procedures Before the Department of Health and Access to Public Records of the Department of Health* [R42-35-PP]. Beginning with the June 2013 edition, these Regulations are being promulgated in a stand-alone format.

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SECTION 1.0 DEFINITIONS

When used in these Rules, the following words and or terms, except as otherwise required by the context, shall have the following meaning:

- 1.1 “**Act**” means RIGL Chapter 38-2 entitled “Access to Public Records.”
- 1.2 “**Department**” means the Rhode Island Department of Health.
- 1.3 “**Director**” means the Director of the Department of Health or her/his designee.
- 1.4 “**Public record**” or “**public records**” means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data (including electronic mail messages, except specifically for any electronic mail messages of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities) or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency
- 1.5 “**RIGL**” means the Rhode Island General Laws, as amended.
- 1.6 “These **Regulations**” means all sections of the *Rules and Regulations Pertaining to Access to Public Records of the Rhode Island Department of Health (R38-2-APRA)*.

SECTION 2.0 GENERAL PROVISIONS

- 2.1 **Public Records Policy.** The Department recognizes both the public’s right to access public records and the individual’s right to dignity and privacy. It is the Department’s policy to facilitate public access to all public records that may be disclosed in accordance with the Act. It is also the policy of the Department to make all public records in the Department’s possession available for public inspection and copying consistent with applicable state or federal law, unless otherwise prohibited by a court of competent jurisdiction.
- 2.2 **Exclusions.**
 - (a) Categories of records specifically excluded pursuant to §38-2-2 of the Act shall not be deemed public records for the purpose of these Regulations.
 - (b) Notwithstanding the provisions of §2.2(a) of these Regulations, any reasonably segregable portion of an excluded public record shall be available for public inspections after the deletion of the information which is the basis of the exclusion, if disclosure of the segregable portion does not violate the intent of the Act and these Regulations.
- 2.3 **Non-applicability.** Records requested by subpoena or a government oversight committee are not considered requests “for access to public records.” Therefore, these Regulations are not applicable to those requests.

SECTION 3.0 ACCESS TO PUBLIC RECORDS

- 3.1 **Public Records.** All public records of the Department shall be open for public inspection, in accordance with provisions of §38-2-3 of the Act, and in accordance with the policy established in §3.6 of these Regulations.
- 3.2 **Procedures for Requesting Public Records.** The Department has instituted the following procedures for members of the public to obtain public records:
- (a) A written request is not required for records available pursuant to the Administrative Procedures Act or other documents prepared for or readily available to the public.
 - (b) You are not required to provide identification or the reason you seek the information. Your right to access public records will not depend upon providing identification or reasons.
 - (c) Members of the public can request public records from the Department by contacting the Department's Office of Legal Services, which is the Department's designated public records unit. The mailing address is: Department of Health, Office of Legal Services, 3 Capitol Hill, Providence, RI 02908. Requests may also be hand delivered to the Director's office (Room 401) and must be addressed to the Office of Legal Services.
 - (d) In order to assure that the Department is able to respond to the request as efficiently and as completely as possible, the request should identify and describe the records being requested with as much specificity as possible. If the description of records being requested is not sufficient to allow the Department to identify and locate the requested records, the Department will notify the person requesting such records that additional information is needed in order to properly respond to the request.
 - (e) Copies of public records will be provided electronically, by facsimile or by mail in accordance with the requesting party's choice, unless complying would be unduly burdensome due to the volume of records requested or the costs that would be incurred. The requesting party is responsible for the actual cost of delivery, if any.
 - (f) The Act allows a public body ten (10) business days to respond to a records request. If a public body is unable to respond to the request within ten (10) business days of receipt, which can be extended an additional twenty (20) days for good cause, which will be explained in writing by the Department.
 - (g) Any denial of access to records, in whole or in part, will be provided through a written response to the requestor indicating the reasons for the denial of access to records or for the denial of certain information contained in a record that is otherwise public pursuant to §38-2-2 of the Act. The written response will also include the process for appeals outlined in §38-2-8 of the Act.
 - (h) Any individual who receives a denial for copies of requested records or the ability to inspect records may petition the Director for a review of the determinations. The Director shall make a final determination whether or not to allow public inspection within ten (10) business days. If the denial is confirmed, the individual may file a complaint with the Office of the Attorney General, who will then investigate and make a determination. The individual may also file a lawsuit in Superior Court.

3.3 **Copy of Official Publications and Rules and Regulations.** Official publications which the Department prepares in the discharge of its duties to inform the public on matters of public interest shall be furnished free of charge when available. The Department shall supply one (1) copy of its rules and regulations, on a particular subject, to an individual requesting the same, free of charge.

- (a) A copy of a Department regulation which contain less than one hundred (100) pages may be provided in either printed or electronic format.
- (b) A copy of a Department regulations which contain one hundred (100) or more pages shall be provided in electronic format.
- (c) Electronic copies of the rules and regulations promulgated by the Department are also available on the Office of the Secretary of State website [<http://www.sos.ri.gov/rules/>]. Certified copies of Department regulations may also be obtained from the Office of the Secretary of State.

3.4 **Fee for Records.** The Department charges a fee for copying and/or search and retrieval of requested documents consistent with applicable state law.

- (a) The Department charges \$0.15 per copied page; provided however, if the response to the request consists of ten (10) or fewer copied pages, no fee will be charged. If the response to the request consists of more than ten (10) copied pages, there will be a charge of \$0.15 for each page.
- (b) The Department will charge \$15.00 per hour for the search and retrieval time required to respond to a request, whether the request seeks copies of records or the right to inspect records; provided however, there will be no charge for the first hour of search and retrieval time.
- (c) The Department will charge for the actual costs for providing electronic records.
- (d) Upon request, the Department will provide the requester with an estimate of the copying costs and search and retrieval costs prior to responding to the request. The Department however, will charge the actual fees for the number of copies and the actual cost for search and retrieval time if those are more or less than estimated.
- (e) The Department reserves the right to require a deposit of the estimated costs if the estimated costs are \$50.00 or more.
- (f) Department personnel or, where applicable an outside copy service, will make copies of requested records. The Department does not have a copy machine available for use by the public to make copies.

3.5 **Payment in Advance.** The cost of copying and search and retrieval as provided in §3.4 of these Regulations must be paid in advance of or at the time of delivery or inspection of the requested documents.

3.6 **Hours of Inspections.**

- (a) When a request is made to inspect public records (as opposed to obtain copies), the requester will be advised when the records are available and he/she can then make an appointment to inspect those documents at the Department between the hours of 8:30 a.m.

and 3:30 p.m. Monday through Friday.

- (b) The time frame for the Department to respond to requests to inspect public records is the same as the time frame applicable to responding to requests for copies of public records as set forth in §3.2 of these Regulations.

3.7 Supervision of Inspections.

- (a) No records shall be removed from the location of inspection by the requestor. The inspection of public records must be accomplished in a manner which will provide for general supervision by authorized Departmental staff. This is necessary to prevent the misplacement or unauthorized removal of records or any other action which may impair the integrity of the public record.
- (b) Personnel in charge of the Office/Program having possession of the public record requested shall have overall responsibility for the security of the public record. However, the individual in charge of that Office/Program may designate a staff member(s) to assist in the search, retrieval, and copying of public records.
- (c) Department personnel having any questions regarding the procedures to be followed should direct inquiries to:
 - (1) The person in charge of the Office/Program or unit within the Department responsible for the activity/function to which the public record being requested relates; or
 - (2) In the event that the public record cannot be readily categorized as falling under the responsibility of a specific Office/Program or unit within the Department, the request should be directed to the Office of Legal Services, which is the Department's designated public records unit.

SECTION 4.0 SEVERABILITY

- 4.1 If any section, subsection, sentence, clause, phrase or portion of the Act or these Regulations is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct and independent provision and this holding shall not affect the validity of the remaining portions of the Act or these Regulations.
- 4.2 Nothing contained in the Act or these Regulations shall be construed to affect any other provisions of the Rhode Island General Laws, as amended.