

ACCESS TO THE PUBLIC RECORDS
OF THE
RHODE ISLAND DEPARTMENT OF TRANSPORTATION

RULES AND REGULATIONS

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Revised: 12/01

1.0 AUTHORITY

1.01 Chapter 38-2 of the Rhode Island General Laws entitled Access to Public Records

1.02 Section 42-13-1 entitled Department of Transportation; Establishment; Powers of the Director. (11/83)

2.0 PURPOSE

2.0.1 To establish regulations to fully implement Chapter 38-2, concerning access to public records held by the Department of Transportation

2.0.2 To identify and safeguard categories of records exempt from disclosure; and

2.0.3 To provide Department of Transportation personnel and the public with regulations and procedures for public record access. (11/83)

3.0 POLICY

It is the policy of the Department of Transportation that its files and records shall be available for inspection by members of the public to the fullest possible extent and consistent with:

- a) the Department's responsibility to pursue effectively its regulatory and other official activities;
- b) the rights of individuals to privacy;
- c) the rights of persons and legal entities to confidential treatment of proprietary information; and
- d) the need of the Department for frank, unimpeded internal policy deliberations. (11/83)

4.0 PUBLIC RECORDS DEFINED

4.0.1 In 38-2-2(d), "public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings 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, subject to the exemptions listed in 38-2-2(d).

4.0.2 The statement of purpose in this chapter indicates that while the intent of the law is to facilitate public access to governmental records, it also intends to protect from disclosure information about particular individuals maintained in department files, when such disclosure would constitute an unwarranted invasion of personal privacy. (11/83)

4.1 EXEMPTIONS/LIMITATIONS

4.1.1 All files and records of the Department are available for public inspection and copying unless they are specifically exempted by these regulations or their disclosure is prohibited by state or federal law, or by order of a court of competent jurisdiction.

4.1.2 The following categories of files and records, or information in such files and records of the Department are specifically exempt from disclosure:

- (1) All records which are identifiable to an individual applicant for benefits, clients, patient, student, or employee; including, but not limited to, personnel, medical treatment, welfare, employment security, and pupil records and all records relating to a client/attorney relationship and to a doctor/patient relationship and all personal or medical information relating to an individual in any files, including information relating to medical or psychological facts, personal finances, welfare, employment security, student performance, or information in personnel files maintained to hire, evaluate, promote or discipline any employee of a public body; provided, however, with respect to employees, the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime and other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state or municipality, work location, business telephone number, the city or town of residence, and date of termination shall be public.

Notwithstanding the provisions of this section, or any other provision of the general laws to the contrary, the pension records of all persons who are either current or retired members of the retirement systems established by the general laws as well as all persons who become members of said retirement systems after (June 17, 1991) shall be open for public inspection. "Pension records" as used in this section shall include all records containing information

concerning pension and retirement benefits of current and retired members of the retirement systems established in title 8, title 37, title 42 and title 45 and future members of said systems, including all records concerning retirement credits purchased and the ability of any member of the retirement system to purchase retirement credits, but excluding all information regarding the medical condition of any person and all information identifying the member's designated beneficiary or beneficiaries.

- (2) Trade secrets and commercial or financial information obtained from a person, firm, or corporation, which is of a privileged or confidential nature.
- (3) Child custody and adoption records, records of illegitimate births, and records of juvenile proceedings before the family court.
- (4) All records maintained by law enforcement agencies for criminal law enforcement; and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency but only to the extent that the disclosure of such becomes record or information which (a) could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings; (b) would deprive a person or a right to a fair trial or an impartial adjudication; (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (d) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, or the information furnished by such a confidential source; (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (f) could reasonably be expected to endanger the life or physical safety of any individual; provided, however, records relating to management and direction of a law enforcement agency and records reflecting the initial arrest of an adult and the charge or charges brought against an adult shall be public.

- (5) Any records which would not be available by law or rule of court to an opposing party in litigation.
- (6) Scientific and technological secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security.
- (7) Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor.
- (8) Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining.
- (9) Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining.
- (10) Any minutes of a meeting of a public body which are not required to be disclosed pursuant to chapter 46 of title 42.
- (11) Preliminary drafts, notes, impressions, memoranda, working papers and work products.
- (12) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or promotion, or academic examinations; provided, however, that a person shall have the right to review the results of his or her examination.
- (13) Correspondence of or to elected officials with or relating to those they represent, and correspondence of or to elected officials in their official capacities.
- (14) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned; provided the law of eminent domain shall not be affected by this provision.
- (15) All tax returns.

- (16) All investigatory records of public bodies pertaining to possible violations of statute, rule, or regulation other than records of final actions taken, provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.
- (17) Records of individual test scores on professional certification and licensing examinations; provided, however, that a person shall have the right to review the results of his or her examination.
- (18) Requests for advisory opinions until such time as the public body issues its opinion.
- (19) Records, reports, opinions, information and statements required to be kept confidential by federal or state law, rule, rule of court or regulation or by state statute.
- (20) Judicial bodies are included in the definition only in respect to their administrative function provided that, records kept pursuant to the provisions of chapter 16 of title 8 are exempt from the operation of this chapter.
- (21) Library records which, by themselves, or when examined with other public records, would reveal the identity of the library user requesting, checking out, or using any library materials.
- (22) Printouts from telecommunication devices for the deaf or hearing and speech impaired.

4.2 COMMERCIAL USE OF PUBLIC RECORDS

- 4.2.1 No person or business entity shall use information obtained from public records pursuant to this regulation to solicit for commercial purposes or to obtain a commercial advantage over the party furnishing that information to the Department.
- 4.2.2 Anyone who, knowingly and willfully, violates the provision of this section, shall, in addition to any civil liability, be punished by a fine of not more than five hundred dollars (\$500) and/or imprisonment for no longer than one (1) year. (38-2-7) (11/83)

5.0 DISCLOSABLE AND NONDISCLOSABLE INFORMATION

If a record contains both disclosable and nondisclosable information, the disclosable portion will be released unless that portion cannot reasonably be segregated from the rest of such record, in which case the record will not be disclosed. (11/83)

6.0 PROCEDURE FOR REQUESTING PUBLIC RECORDS

6.0.1 A request for inspection or copying of public records shall be presented in writing to the Office of Chief Legal Counsel, Department of Transportation, 2 Capitol Hill – Room 251, Providence, Rhode Island 02903 during the ordinary business hours of the Department on forms provided by the Department and must reasonably describe the records sought in a way that will permit their identification and location by Department personnel. At the discretion of Department legal counsel, the requirements of a formal request may be waived.

6.0.2 If the description of records sought in the request is not sufficient to allow the Department to identify and locate the requested records, the Department will notify the requester that additional information is needed.

6.0.3 The Department will make every reasonable effort to honor the request within ten (10) business days of receipt of the form as specified herein.

6.0.4 The Department will make its best efforts to notify the inquirer of the status of the request within ten (10) days, should it appear that the request cannot be honored within the ten (10) days.

6.0.5 Nothing herein shall be construed as requiring the Department to reorganize, consolidate, or compile data not otherwise maintained by the Department in the form requested. If records requested directly relate to a departmental employee, prior to turning those documents over to the requester, the Department will provide five (5) days prior written notice of the request to the employee. (11/83)

6.1 APPEALS PROCESS

6.1.1 If the record is not made available for inspection, the requester will be notified of the reason(s) for denial within ten (10) business days of such request. Failure to comply with a request to so inspect or copy such a public record within the ten (10) day period shall be

deemed a denial. The requester will also be informed that he may appeal the decision to the Director of Transportation.

- 6.1.2 If an appeal is made to the Director and a denial is upheld, the appellant will be informed of the reason(s) within ten (10) business days after the submission of his review petition.
- 6.1.3 If the Director approves the record's disclosure to the requester, the Director's Office will arrange for a time and place for the inspection of the record.
- 6.1.4 If the Director denies an appeal, the appellant may file a complaint with the Attorney General or may retain private counsel for the purpose of instituting proceedings for injunctive or declaratory relief in the Superior Court of the County where the record is maintained. (38-2-8) (11/83)

6.2 FEES

- 6.2.1 Official publications which the Department prepares in the discharge of its duty to inform the public on matters of public interest shall be furnished free of charge when available.
- 6.2.2 The Department will supply one copy of any of its rules and regulations to an individual requesting same free of charge. Rules and Regulations of the Department are also on file at the Office of the Secretary of State and certified copies thereof may be obtained from that office.
- 6.2.3 The Department shall charge a fee of fifteen cents (\$.15) per page and an hourly rate of fifteen (\$15.00) for time spent searching and copying of all other public records, as defined herein. If the time spent on such searching and copying is less than 30 minutes, no fee other than a per page copying fee shall be charged. Copies of records on other than paper 8 ½"x 14" paper will be charged at the actual reproduction cost.
- 6.2.4 All payments for copies of records shall be paid in advance of delivery.
- 6.2.5 The Department will inform the person requesting the record of the approximate cost which will be incurred. (11/83)

7.0 SUPERVISION OR INSPECTIONS

- 7.0.1 Without regard for the location(s) selected for the public's inspection of records, the inspection will be accomplished in a manner which will provide for general supervision by authorized staff. This is necessary to prevent the unauthorized removal of records or other actions which would destroy the integrity of the record.
- 7.0.2 The Section head in charge of the activity related to the public record shall have overall responsibility for the security of the public record. However, the section head may designate a staff member to coordinate the functions and responsibilities for the public's inspection of records.
- 7.0.3 All personnel dealing with the public era to be made aware, by their section heads of the procedures established for public inspection of records and shall direct inquirers to the Office of Chief Legal Counsel which will serve as a resource in matters relating to the public's inspection of records. (11/83)

8.0 SEVERABILITY

If any provision of these rules and regulations or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of the rules and regulations which can be given effect, and to this end, the provisions of these rules and regulations are declared to be severable. (11/83)

CERTIFICATION

I hereby attest that the amended within Rules and Regulations Relating to Access to the Public Records of the Rhode Island Department of Transportation have been adopted by the Rhode Island Department of Transportation and are true copies.

Date

William D. Ankner, Ph.D.
DIRECTOR