



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MENTAL HEALTH SERVICES

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DIVISION OF MENTAL HEALTH SERVICES

ADMINISTRATIVE BULLETIN TRANSMITTAL MEMORANDUM

July 7, 2002

**SUBJECT: Administrative Bulletin 3:24
Compliance with the Open Public Records Act (OPRA) of 2002**

The attached Administrative Bulletin is being forwarded for your review, action if necessary, and distribution to staff as appropriate. Please be advised that all employees are responsible for becoming familiar with its contents and assisting in ensuring that the Division complies with the new law. Also attached is a revised Administrative Bulletin Index for your Manual.


Alan G. Kaufman
Director

AGK:pjt
Attachment

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MENTAL HEALTH SERVICES

AB 3:24
EFFECTIVE JULY 8, 2002

TITLE : Compliance with N.J.S.A. 47A:1-1 et seq., the New Jersey Open Public Records Act of 2002, (OPRA), effective July 8, 2002, and N.J.A.C. 10:1B-1.1 et seq.

PURPOSE: The purpose of this bulletin is to create a uniform approach in the Division to providing records in accordance with the OPRA.

SCOPE: This bulletin applies to the Division's central office, regional offices, and hospitals. This procedure applies only to records requested pursuant to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1, et seq. Release of client records shall be in accordance with the requirements contained in AO 2:01 and AB 82-2, Privacy of Patient Information/Data.

DEFINITIONS:

"Government records" or "agency records" subject to this bulletin are records that are made, maintained, in the possession of, or kept by a Division employee or agency and not specifically exempted from the definition of government records in the Open Public Records Law. Agency records include paper, electronic, sound recorded, microfilm and printed books and documents.

"Consumer record" means the organized compilation of documents that relate to the provision of services to an individual, living or deceased, including any such compilation that identifies a consumer and relates to any clinical, consultative, or administrative service rendered to that consumer pursuant to an employee's duties under Title 30.

A "Division component" means a worksite: the components of the Division are the Central Office in Trenton, the three Regional Offices, and the six hospitals operated by the Division. The Ann Klein Forensic Center, for purposes of OPRA, includes the clinical operations of the sexually violent predator units at Kearney and Rahway.

"Employee record" means the work record of an individual employed by the Division, which includes but is not limited to dates of employment, separation, title, salary, performance evaluations, corrective action, discipline, medical/health records, and reports of criminal activity.

"Liaison" means a person assigned by the Director, an Assistant Director, or a Hospital CEO to assist the Records Custodian for the Division component in accessing and copying records from a particular location at the component.

"Records Custodian" means a person designated by the Commissioner, a Director, an Assistant Director, or a Hospital CEO to act as the coordinator of compliance with the law for a Division component.

GENERAL STANDARDS

- A. All agency records shall be considered public unless exempted by law, regulation or order.
- B. Consumer records are exempt from disclosure. The Division provides services under Title 30, which specifically prohibits the release of any information identifying a person who has received such services unless that release is authorized by the person, ordered by a court, or authorized by law. The legitimate right of the public to records of the Division can never compromise the right of consumers to privacy and confidentiality in receiving services.
- C. Public employees have rights as private citizens to privacy and confidentiality. Except for an individual's name, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of any pension received, employment records are not public records. They must be sought under another law, or with the consent of the employee, or by some other authority.
- D. Releases of public information not on the OPRA form and not citing OPRA may continue to be made by any employee in compliance with confidentiality standards, but the procedures and standards in this bulletin will not apply. All Division employees are required to become familiar with the identity of the Division's Records Custodians, to immediately forward OPRA requests to the appropriate custodian, to cooperate with the provision of public records to any Records Custodian, and to protect the confidentiality of other, non-public records.
- E. Advice concerning whether a record should be released may be sought from the Department of Human Services Office of Legal and Regulatory Liaison, which includes the Division's Legal Liaison.

PROCEDURES

- A. **Appointment of Records Custodians.** Each component of the Division shall identify a Records Custodian, and their names shall appear on the Department's website. A person who is assigned to replace a prior Records Custodian must notify the Department of his or her appointment so that the public may be promptly informed about who should receive requests.
- B. **Form of request.** All requests for records shall be made in writing. A request must be made by letter or electronic mail on a state-approved form to a custodian identified on the Department's website and in public postings at the Division components. Persons attempting to request records by facsimile or telephone shall be sent a form or referred to the website.
- C. **Requests not directed to the proper Records Custodian.** Requests for information shall be immediately forwarded to the appropriate Records Custodian if they are sent to any other employee.
- D. **Login of request.** Upon receipt of a completed form requesting documents, if the request is understandable and identifies documents within the control of the

component, the Records Custodian shall log in the request on the statewide Oracle tracking system and shall notify the appropriate Liaison of the request by the next business day. If the records request is not clear, the Records Custodian shall contact the requestor to clarify the request before logging the request or seeking documents. If the records are available in some other way, such as on the Department's website, the Records Custodian will so advise the requestor and give him or her the opportunity to withdraw the request.

1. **Unavailable Records.** If the records are in storage, the Records Custodian shall determine how long it will take to retrieve the records and shall advise the requestor accordingly within 7 days of the date the request is received. If the records are in the Archives or stored in the Office of Information Technology, the requestor will be referred to the State Archivist or the Records Custodian of the Office of Information Technology, as appropriate. If the request identifies documents not in storage and not in the possession of the component, the Records Custodian forward it to a Records Custodian who possesses those records and shall so notify the requestor. If it is not possible to identify an appropriate Records Custodian, the Records Custodian shall deny the request.

2. **Anonymous requests.** Anonymous requests, if clear, are logged in and processed for pick up by the requestor. If a payment or clarification will be required before processing, the Records Custodian shall wait for the requestor to call or appear for the records, then shall obtain payment or clarify the request and proceed to fill the request as appropriate.

- E. **Referral to Liaison.** The Liaison shall send the records to the Records Custodian within two working days of his or her receipt of the request. The Liaison shall note in the files where any records forwarded to the Records Custodian have been removed. If the records cannot be removed from files or bound volumes, the Records Custodian will advise the Liaison on whether to send copies.
- F. **Determination of records to be released.** The Records Custodian, in consultation as necessary with the Liaison and the Office of Legal and Regulatory Liaison, shall determine which records are government records and which of those are exempt from disclosure.
- G. **Disruption exemption.** If fulfilling a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after first attempting to reach a reasonable solution with the requestor that accommodates the interests of both the requestor and the agency. When a Records Custodian believes that such negotiation is necessary, s/he shall notify the Office of Legal and Regulatory Liaison before denying the request.
- H. **Delivery.** The Records Custodian shall notify the requestor as soon as possible, but in no case more than seven working days after the request is made, not including the day the request was received, that the records are available for duplication, and what the cost will be of duplicating the records. When a check or money order for that amount is received, the Records Custodian shall duplicate and send the records or notify the requestor that the records are ready for pickup as soon as possible.

I. Records that are not Government Records. The following records are not government or agency records and so may not be released pursuant to an OPRA request:

1. personnel and pension records, except for an individual's name, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of any pension received;
2. public employment or licensing test data;
3. constituent referrals from State Legislators;
4. autopsy / post mortem records;
5. criminal investigation records;
6. victim's records, except to the victim;
7. trade secrets, including data processing software under license to the Division;
8. records that are within the attorney-client privilege, including opinions of the Attorney General that are so designated;
9. administrative or technical information the disclosure of which would jeopardize computer or physical plant security or consumer or staff safety;
10. information that if disclosed would give an advantage to competitors or bidders, including responses to an RFP before a grant is made;
11. information about harassment or discrimination complaints or grievances;
12. collective bargaining negotiations or strategic documents;
13. reports of internal investigations;
14. risk management and unusual incident reports;
15. information that has been ordered by a court to be confidential;
16. inter-agency or intra-agency consultative, advisory, or deliberative material, which includes but is not limited to communications between government employees such as recommendations, draft documents, proposals, suggestions or other subjective documents reflecting personal opinions of the writer;
17. any other material made confidential by law, executive order, or regulation, including but not limited to consumer records, Clinical Review Board and peer review documents, records that come within the patient-physician or other privilege, foster and other out-of-home placement information about children, and records that are required by a court order or court-sanctioned agreement to be kept confidential;
18. any other material that contains a citizen's personal information with which the Division has been entrusted when disclosure of the material would violate the citizen's reasonable expectation of privacy.

J. Redaction of client and employee personal information. Any records which are otherwise public records but contain information about a consumer, employee or any other person that would abridge his or her reasonable expectation of privacy shall only be released pursuant to a public records request when those identifiers are redacted from the record. Any social security number, credit card number, home address, personal telephone number, or driver's license number shall also be redacted before release of any record unless that information is specifically required or permitted by law to be released.

- K. Additional time to fill requests.** If additional time is needed to redact information or if a determination by the Attorney General's office of whether the record may be released is required, the Records Custodian shall advise the requestor in writing within 7 business days why the release may be delayed and approximately when the requested records will be made available or when a decision is expected.
- L. Immediate access.** If the request is for budgets, bills, vouchers, contracts, collective negotiations agreements, individual employment contracts, or public employee salary or overtime information, the Records Custodian shall communicate the request to the fiscal or personnel section Liaison of the Division unit, as appropriate, and that Liaison shall provide immediate access to the requestor. If copies are requested, the Records Custodian shall note the cost of the records on the request form and advise the requestor that the copies shall be made available or mailed, depending on the preference of the requestor, within one working day of receipt of payment.
- M. Maintaining Records.** All Division employees shall maintain, discard, destroy, and archive records in their possession in accordance with the Records Retention Schedule established by the Department of State. Each employee shall regularly review his or her email account and paper, electronic, and other files to assure that their contents comply with the Records Retention Schedule. Records that are draft documents or otherwise qualify as deliberative materials should be clearly so marked; emails and facsimiles should indicate their confidential or deliberative nature as appropriate. Suggested language for emails and fax covers is at Appendix B to this bulletin.
- N. Email.** Many email documents are advisory, consultative, or deliberative, and therefore are not government records for purposes of disclosure. If an employee is asked by the Records Custodian to provide documents needed to comply with an OPRA request by providing email documents, the employee shall forward any non-deliberative, non-confidential emails to the Records Custodian and shall separately forward confidential and deliberative, consultative, or advisory emails. The Records Custodian shall review the latter emails and, if s/he agrees, will withhold the documents and destroy the forwarded material that is either confidential or deliberative, consultative, or advisory.
- O. Copy Fees.** Copies of public records may be purchased by any person upon payment of a fee. Except as may otherwise provided by law or regulation, the fee assessed shall not exceed the following: first page to the tenth page, \$0.75 per page; eleventh page to twentieth page, \$0.50 per page; all pages over twenty, \$0.25 per page. Fees are payable by check or money order to the "State of New Jersey" and shall be immediately noted on the tracking system and forwarded by the Records Custodian with a copy of the request to the component's business office for deposit and disbursement to the component's printing account.
1. **Additional fees.**
 - a. **Original format prevents routine duplication.** In addition to the per page fee, if the record cannot be reproduced by ordinary document copying equipment or involves an extraordinary expenditure of time

and effort to accommodate the request, the Records Custodian shall determine the additional cost and so advise the requestor. If the requestor agrees to pay the extra cost, the Records Custodian shall proceed to fulfill the request after receipt of that amount in deposit. If the requestor objects to the charge, the Records Custodian shall attempt to find an alternative means in which to provide the material, and if that is not possible, shall deny the request and notify the Office of Legal and Regulatory Liaison.

- b. **Requests for records in alternate formats.** When possible, the information shall be provided in the medium requested. If the agency does not maintain the record in the medium requested, the Division may provide the record in some other meaningful medium. In cases where requests for records are in a medium not routinely used by the agency and require a substantial amount of manipulation or programming of information technology, the Division may charge, in addition to the cost of duplication, a special reasonable charge related to its cost of making the copy.
- c. **Requestor's disability mandates different format.** If the format is one that is needed by the requestor to accommodate a disability, there shall be no additional charge for a reasonable accommodation. Before notifying the requestor of special charges or of a waiver for a disability, the Records Custodian shall consult with the Office of Legal and Regulatory Liaison.

2. **Waiver.** The Records Custodian may waive all or part of the fee for indigents, for clients receiving mental health services from the Division or any contract agency or licensee of the Division. Any record of such a waiver shall not be a public record.
3. **Deposits.** The Division shall require a deposit in the full amount estimated for any extraordinary expenses or special costs or half the per page fee when the duplication cost exceeds \$5.00. Deposits for extraordinary expenses or special costs shall be payable by check or money order to the "State of New Jersey," and the Records Custodian shall forward any such deposit to the component's business office to be deposited as a cash receipt and refunded to the unit that incurred the special cost or extraordinary expense.
4. **Fees payable before release.** Where a fee is required, the requestor must submit a check before the records may be released. When a deposit is required, the deposit must be received before the requested records are copied or generated.


- P. **Response to requestor.** The Records Custodian shall prepare and sign a disposition response. It shall be printed from the tracking system where possible and in any case:
1. shall indicate that the records requested are attached; or
 2. shall indicate when the record will be provided; or
 3. shall indicate a time and place during regular business hours when the record may be examined and copied; and
 4. shall indicate any fee for duplication and what deposit is required;
- OR

5. if the request is denied in full or in part, the Records Custodian shall provide a written explanation for the denial. Reasons may include:
 - a) The request contains inadequate information to process the request.
 - b) The record is not one made, maintained, filed, or received by the Division.
 - c) The records are not government records. Any denial under this section shall state what in the nature of the records renders them nonpublic under OPRA.
 - d) The records are confidential. Any denial under this exemption shall also state what law, rule, executive order, court rule, or court order renders them confidential.
 - e) The requestor would not certify that s/he was not convicted of an indictable crime, and was seeking personal information about a possible victim.
 - f) Payment was not made or the request was withdrawn.
 - g) The provision of the documents would substantially disrupt the operations of the Division, and after discussion the Records Custodian and the requestor were unable to agree on a reasonable solution that would both supply the records and not disrupt operations.

Q. Release of records. If the request is granted, and after the requestor submits payment in full, the Records Custodian shall note on the response form that the payment was made and release the records.

NOTICE TO PUBLIC

A copy of the notice contained in Appendix A shall be prominently displayed in the parts of the component that is open to or frequented by the public and on or prominently linked to any web site maintained by the Department or Division. Copies of the current request form, available on the State website, shall be made available at any such location.


Alan G. Kaufman
Director
Division of Mental Health Services

DEPARTMENT OF HUMAN SERVICES

DIVISION OF MENTAL HEALTH SERVICES

PUBLIC NOTICE

**REQUEST FOR ACCESS TO GOVERNMENT
RECORDS**

**UNDER THE NEW JERSEY OPEN PUBLIC
RECORDS ACT OF 2002, RECORDS OF THIS
AGENCY ARE PUBLIC UNLESS OTHERWISE
EXEMPTED BY LAW, REGULATION OR
ORDER.**

A person may request the opportunity to inspect, examine or copy an agency record by completing the appropriate form, available from _____, the Records Custodian for this Hospital/Office, or on the web at http://www.nj.gov/grc/public_info.html. If the request is denied, the person making the request shall have the opportunity to file an appeal by:

Filing an action in Superior Court or

Filing a complaint with the Government Records Council, Department of Community Affairs

Appendix B

Email notice: "This communication, including any attachments, is intended solely for the use of the sender and recipient in deliberations necessary to conduct official State business, and is not to be construed as a public document. Any information in this email identifying a client of the Department of Human Services is confidential. If you have received this e-mail in error, you must not review, transmit, convert to hard copy, copy, use or disseminate this e-mail or any attachments to it, and you must delete this message. You are also requested to notify the sender by return e-mail."

Fax Cover Notice: "The documents accompanying this transmission cover may contain confidential information that belongs to the sender, is not a public record, and is legally privileged. This information is intended only for the use of the individual or entity to whom it is addressed. The authorized recipient of this information is prohibited from disclosing this information to any other party or anyone not lawfully authorized to obtain it from the source, and is required to destroy the information after its stated need has been fulfilled. If you are not the intended recipient of this facsimile, you are hereby notified that any disclosure, copying, distribution, or action taken in reliance on the contents of these documents is strictly prohibited. If you have received this facsimile in error, please notify the sender immediately at [the sender's phone number] to arrange for the return or destruction of the documents. Thank you for your cooperation with these important security measures."