

CHAPTER 22

RECORDS

Authority

N.J.S.A. 30:1B-6 and 30:1B-10.

Source and Effective Date

R.2009 d.272, effective August 13, 2009.
See: 41 N.J.R. 2202(a), 41 N.J.R. 3301(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 22, Records, expires on August 13, 2016. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 22, Records, was adopted as R.1988 d.305, effective July 5, 1988. See: 20 N.J.R. 723(a), 20 N.J.R. 1561(a).

Subchapter 4, Expungement or Sealing of Records, was adopted as R.1989 d.582, effective November 20, 1989. See: 21 N.J.R. 2852(a), 21 N.J.R. 3665(b).

Pursuant to Executive Order No. 66(1978), Chapter 22, Records, expired on July 5, 1993.

Chapter 22, Records, was adopted as new rules by R.1994 d.113, effective March 7, 1994. See: 25 N.J.R. 5754(a), 26 N.J.R. 1228(b). Pursuant to Executive Order No. 66(1978), Chapter 22 expired on March 7, 1999.

Chapter 22, Records, was adopted as new rules by R.1999 d.236, effective July 19, 1999. See: 31 N.J.R. 1136(a), 31 N.J.R. 1924(c).

Chapter 22, Records, was readopted as R.2004 d.317, effective July 23, 2004. See: 36 N.J.R. 1869(a), 36 N.J.R. 3880(b).

Chapter 22, Records, was readopted as R.2009 d.272, effective August 13, 2009. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

10A:22-1.1 Purpose

(a) The purpose of this chapter is to establish provisions for:

1. The release and examination of inmate records;
2. The expungement or sealing of inmate records; and
3. Requests for government records pursuant to N.J.S.A. 47:1A-1 et seq.

Amended by R.2004 d.317, effective August 16, 2004.
See: 36 N.J.R. 1869(a), 36 N.J.R. 3880(a).

In (a), substituted "provisions" for "policies and procedures" in the introductory paragraph, substituted references to inmate records for inmate and parole records in 1 and 2, added 3.

10A:22-1.2 Scope and applicability

The rules in this chapter shall be applicable to the records of the Department of Corrections.

Amended by R.2004 d.317, effective August 16, 2004.
See: 36 N.J.R. 1869(a), 36 N.J.R. 3880(b).

Rewrote the section.

10A:22-1.3 Definitions

The following terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Custodian" or "custodian of records" means any individual appointed by the Commissioner to administer the provisions of the Open Public Records Act in the Department of Corrections.

"Data file" means a collection of data stored on a computer.

"Government record" or "record" means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material. A government record shall not include information which is deemed to be confidential in accordance with N.J.S.A. 47:1A-1 et seq.

"Open Public Records Act" or "OPRA" means N.J.S.A. 47:1A-1 et seq. as amended and supplemented.

“Request” means a written request, sufficiently clear to understand the information being sought.

Amended by R.2004 d.317, effective August 16, 2004.
See: 36 N.J.R. 1869(a), 36 N.J.R. 3880(b).

Inserted “Custodian” or “custodian of records”, “Government record” or “record” and “Open Public Records Act” or “OPRA”.

Amended by R.2006 d.151, effective May 1, 2006.

See: 38 N.J.R. 96(a), 38 N.J.R. 1836(a).

In the introductory paragraph, deleted a comma; in the definition of “Government record” or “record”, deleted “his or her or its” before “official business”, substituted “of any political subdivision thereof, including subordinated boards thereof” for “that has been received in the course of his or her or its official business by any such officer, commission, agency, or authority of the State”, and added the last sentence; and deleted the definition of “Staff”.

Amended by R.2009 d.272, effective September 8, 2009.

See: 41 N.J.R. 2202(a), 41 N.J.R. 3301(b).

Deleted definition “Responsible health authority”.

10A:22-1.4 Forms

(a) The following form related to a request for a government record shall be obtained from the Department of Corrections record custodian, the Department of Corrections website at www.state.nj.us/corrections, or at correctional facilities:

1. Form 110 Department of Corrections Request for Government Records.

New Rule, R.2004 d.317, effective August 16, 2004.

See: 36 N.J.R. 1869(a), 36 N.J.R. 3880(b).

10A:22-1.5 Identity theft prevention and reporting

(a) Pursuant to the Identity Theft Prevention Act at N.J.S.A. 56:11-44 et seq. and definitions relative to the security of personal information at N.J.S.A. 56:8-161, in order to prevent identity theft, Departmental staff shall be responsible for safeguarding “personal information” as this term is defined in N.J.A.C. 10A:1-2.2. Additionally, Departmental staff shall be responsible for taking reasonable steps to ensure that all records containing personal information are not lost, stolen, inappropriately accessed or released, and for complying with any related internal management procedures.

(b) In the event that an incident that may constitute a breach of security is suspected or discovered, the staff member discovering the suspected breach of security shall report same to their immediate supervisor. Supervisory/administrative staff shall ensure that any such incident is reported through the administrative chain of command to the Commissioner. For purposes of rules regarding identity theft, “breach of security” means unauthorized access to electronic files, media or data containing personal information that compromises the security, confidentiality or integrity of personal information when access to the personal information has not been secured by encryption or by any other method or technology that renders the personal information unreadable or unusable. Good faith acquisition of personal information by an employee for a legitimate business purpose is not a breach of security, provided that the personal information is not used

for a purpose unrelated to Departmental business or subject to further unauthorized disclosure.

(c) All reports related to identity theft shall be provided to the Commissioner or designee in accordance with internal management procedures. The Commissioner or designee shall report the incident of identity theft to the Department of Law and Public Safety, Division of State Police for investigation and handling as appropriate.

New Rule, R.2007 d.64, effective February 20, 2007.

See: 38 N.J.R. 4622(b), 39 N.J.R. 652(b).

SUBCHAPTER 2. GOVERNMENT RECORDS

10A:22-2.1 Information pertaining to a victim(s)

(a) Pursuant to N.J.S.A. 47:1A-2.2, a person convicted of any indictable offense under the laws of this State, any other state or the United States shall be denied access to a government record if the record contains personal information pertaining to the person’s victim(s) or family member(s) of a victim(s).

(b) An exception to (a) above may be made only if a court, upon motion by the requester or his or her representative, has determined that the information is necessary to assist in the defense of the requester. The inmate or representative thereof shall submit the determination by the court to the custodian of records for review and release authorization determination.

Amended by R.2004 d.317, effective August 16, 2004.

See: 36 N.J.R. 1869(a), 36 N.J.R. 3880(b).

Rewrote the section.

10A:22-2.2 Designation of custodian of records

(a) The Commissioner, Department of Corrections shall designate a custodian or alternate custodians as may be determined necessary and who shall be responsible for accepting requests for access to records held or controlled by the Department.

(b) Contact information for the custodian of records for the Department of Corrections is as follows:

1. Custodian of Records

Office of External Affairs
Department of Corrections
PO Box 863
Trenton, New Jersey 08625-0863; or

2. Department of Corrections website at www.state.nj.us/corrections, the State OPRA Central website at www.state.nj.us/opra and otherwise made available to the public.

Repeal and New Rule, R.2004 d.317, effective August 16, 2004.

See: 36 N.J.R. 1869(a), 36 N.J.R. 3880(b).

Section was “Public records and information”.

10A:22-2.3 Records designated confidential

(a) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., any other law, rule promulgated under the authority of any statute or Executive Order of the Governor, resolution of both houses of the Legislature, Executive Order of the Governor, Rules of Court or any Federal law, Federal regulation or Federal order, the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq.:

1. Informant documents and statements;
2. Special Investigations Division investigations records and reports, provided that redaction of information would be insufficient to protect the safety of any person or the safe and secure operation of a correctional facility;
3. A record, which consists of any alcohol, drug or other substance abuse information, testing, assessment, evaluation, report, summary, history, recommendation or treatment, including any assessment instruments;
4. Any information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation;
5. A report or record relating to an identified individual, which, if disclosed, would jeopardize the safety of any person or the safe and secure operation of the correctional facility or other designated place of confinement;
6. Comprehensive criminal history information (rap sheet);
7. Records of another department or agency allocated to that department in the possession of the Department of Corrections when those records are made confidential by a rule of that department or agency allocated to that department adopted pursuant to N.J.S.A. 47:1A-1 et seq., and Executive Order No. 9 (1963) or pursuant to another law authorizing the department or agency to make records confidential or exempt from disclosure; or
8. The Department of Corrections Disaster/Terrorism Contingency Report.

(b) An inmate shall not be permitted to inspect, examine or obtain copies of documents concerning any other inmate.

Repealed by R.2004 d.317, effective August 16, 2004.

See: 36 N.J.R. 1869(a), 36 N.J.R. 3880(b).

Section was "Confidential records and information".

New Rule, R.2011 d.040, effective February 7, 2011.

See: 42 N.J.R. 2305(a), 43 N.J.R. 308(a).

Section was "Reserved".

10A:22-2.4 (Reserved)

Repealed by R.2004 d.317, effective August 16, 2004.

See: 36 N.J.R. 1869(a), 36 N.J.R. 3880(b).

Section was "Limitation on inmate and parolee records and information".

10A:22-2.5 Availability of records and information to non-Department of Corrections agencies or individuals

(a) Information from inmate records shall be provided to law enforcement agencies or individuals, who request such information in the performance of their public duties.

(b) Inmate records may be made available to the following non-Department of Corrections agencies or individuals:

1. Courts of competent jurisdiction;
2. The Attorney General;
3. A county prosecutor;
4. The New Jersey State Parole Board;
5. A county probation department; and
6. Police departments.

(c) The Administrator or designee shall determine the records of inmates that shall be made available to government agencies or other authorized non-Department of Corrections individuals upon request. These agencies and individuals include, but are not limited to, the following:

1. The Social Security Administration;
2. The Veterans Administration;
3. Attorneys of record in pending cases, or investigating claims;
4. Law enforcement agencies other than those in (b) above; or
5. Medical or mental health doctors.

Amended by R.2004 d.317, effective August 16, 2004.

See: 36 N.J.R. 1869(a), 36 N.J.R. 3880(b).

Substituted references to inmate records for inmate and parolee records throughout and deleted the N.J.A.C. reference in (a).

Case Notes

Before the Department of Corrections (DOC) can deprive the inmate of his right to be heard, deprive the press of the right to report in detail on the execution process, and deprive the public of the right to know how the process is actually carried out and what its implications are, the DOC must show with some degree of specificity how its legitimate concerns for institutional safety, security, and penological objectives are advanced by regulations that forbid inmate's contact with any member of the news media, impose a blanket prohibition on filming of the execution, and permit media witnessing only after the inmate is strapped to the gurney and the intravenous lines are connected. In the Matter of Readoption with Amendments of Death Penalty Regulations N.J.A.C. 10A:23, by the New Jersey Department of Corrections. 842 A.2d 207, 367 N.J.Super 61.

10A:22-2.6 Availability of records and information to staff

(a) Information from inmate records shall be provided to staff who have a clear and specific need to know the information for use in connection with their work responsibilities as determined by the Administrator or designee. The amount

of information necessary or relevant for staff performance of duties shall be determined by the Administrator or designee.

(b) Medical and mental health records or information shall be provided as determined by the Administrator and the responsible health authority and as limited below:

1. The complete file shall be available to medical or mental health staff involved in treating the inmate and/or drafting reports concerning the inmate's condition; and

2. Medical or mental health information may be made available to Department of Corrections staff to whom the information is relevant in connection with the staff person's need to make a decision concerning the inmate such as, but not limited to, job placement, and discipline. Only that amount of information that is necessary shall be provided to authorized staff.

(c) In the event a question arises as to the disclosure of medical or mental health information to staff, the question shall be referred to the Department of Corrections, Director of Health Services for review and decision which shall be final.

Amended by R.2004 d.317, effective August 16, 2004.
See: 36 N.J.R. 1869(a), 36 N.J.R. 3880(b).

In (a), deleted "and parolee" following "from inmate"; in (b)2, substituted "and discipline" for "discipline and parole"; in (c), substituted "Department of Corrections Health Services Supervisor" for "Administrator".

Amended by R.2009 d.272, effective September 8, 2009.
See: 41 N.J.R. 2202(a), 41 N.J.R. 3301(b).

In (c), substituted ", Director of Health Services" for "Health Services Supervisor".

10A:22-2.7 Availability of medical records to inmates

(a) In accordance with N.J.A.C. 13:35-6.5, an inmate may obtain a copy of his or her medical records by submitting a written request, on Form MR-022, to the Medical Department.

(b) The responsible health authority or designee shall provide a copy of the medical records to the inmate within 30-calendar days.

(c) The MR—022 form shall be maintained in the appropriate inmate medical file.

(d) Copies of mental health records related to routine mental health care, treatment and counseling shall be provided to inmates. However, copies of mental health records generated by professional mental health staff, such as evaluative or administrative assessment reports, or reports that, if disclosed, would compromise the safety of the inmate or others, or the security or orderly operation of the correctional facility, shall not be provided to inmates without court order or consent protective agreement.

(e) Information may be withheld if, in the opinion of the responsible health authority or Administrator, release of the information would:

1. Be harmful to the inmate;
2. Jeopardize the safety or well-being of other individuals;
3. Compromise the privacy rights of other individuals; and/or
4. Have a substantial adverse impact on the orderly operation of the correctional facility.

(f) Photocopies of the medical record shall be provided in accordance with this section to nonindigent inmates at the rate of \$.10 per page and at no charge to the indigent inmate as defined in N.J.A.C. 10A:1-2.2.

Amended by R.2004 d.317, effective August 16, 2004.

See: 36 N.J.R. 1869(a), 36 N.J.R. 3880(b).

In (a), inserted a N.J.A.C. reference and substituted "Medical Department" for "Administrator or designee"; deleted former (b) and recodified former (c) as (b), inserting "calendar" following "30"; inserted a new (c). Amended by R.2008 d.48, effective April 7, 2008.

See: 39 N.J.R. 2583(c), 40 N.J.R. 1869(a).

Section was "Availability of medical record summaries to inmates". In (a) and (b), substituted "records" for "record summaries"; in (a), substituted "his or her" for "a computer generated"; in (b), deleted "computer generated" preceding "medical" and substituted "30-calendar" for "30 calendar"; deleted former (d) and (e); recodified former (f) through (h) as (d) through (f); rewrote (d); and in (f), deleted "summaries" following "record".

Petition for Rulemaking.

See: 40 N.J.R. 4840(a).

10A:22-2.8 (Reserved)

Repealed by R.2004 d.317, effective August 16, 2004.

See: 36 N.J.R. 1869(a), 36 N.J.R. 3880(b).

Section was "Procedure for release of confidential inmate or parolee records and information".

10A:22-2.9 (Reserved)

Repealed by R.2004 d.317, effective August 16, 2004.

See: 36 N.J.R. 1869(a), 36 N.J.R. 3880(b).

Section was "Records and information authorized by the inmate or parolee for inspection or release".

10A:22-2.10 (Reserved)

Repealed by R.2004 d.317, effective August 16, 2004.

See: 36 N.J.R. 1869(a), 36 N.J.R. 3880(b).

Section was "Litigation".

10A:22-2.11 Juvenile records and information

(a) Social, medical, mental health, legal and other records pertaining to juveniles shall be strictly safeguarded from public inspection.

(b) Juvenile records shall be made available only to the following agencies or persons:

1. Courts of competent jurisdiction;
2. A county probation department;
3. The Attorney General;

4. A county prosecutor;
5. The juvenile's parent(s) or guardian;
6. The attorney of the juvenile;
7. The Division of Youth and Family Services, if providing care or custody of the juvenile;
8. A law enforcement agency of New Jersey, another state or the United States for the purposes of law enforcement; or
9. Any person or agency interested in a case or in the work of the agency keeping the records, by order of the court for good cause shown; and
10. Any institution to which the juvenile is currently committed.

(c) Pursuant to N.J.S.A. 2A:4A-60, at the time of charge, adjudication or disposition, information as to the identity of a juvenile charged with an offense, the offense charged, the adjudication and disposition shall, upon request, be disclosed to:

1. The victim or a family member of the victim;
2. Any law enforcement agency which investigated the offense;
3. The person or agency which filed the complaint;
4. Any law enforcement agency in the municipality where the juvenile resides;
5. A party in a subsequent legal proceeding involving the juvenile, upon approval by the court; or
6. The principal, on a confidential basis, of the school where the juvenile is enrolled for use by the principal and such members of the staff and faculty of the school as the principal deems appropriate for maintaining order, safety, or discipline in the school or to planning programs relevant to the juvenile's educational and social development provided that no record of such information shall be maintained except as authorized by regulation of the Department of Education.

Amended by R.2007 d.17, effective January 16, 2007.
 See: 38 N.J.R. 4159(a), 39 N.J.R. 216(a).
 Rewrote (c)1.

10A:22-2.12 Reimbursement for costs of copying

(a) Pursuant to N.J.S.A. 47:1A-5, except as otherwise provided in this subchapter, correctional facilities and other administrative units within the Department of Corrections may charge the following fees for copying government records:

\$0.05 per letter size page or smaller, and \$0.07 per legal size page or larger.

(b) Governmental agencies or officers who request records in the performance of their official duties shall be exempt from payment of fees for copying records.

(c) The copying fees for records other than government records shall also be based on the fee schedule in (a).

(d) When or if fees for the copying of government records change in accordance with N.J.S.A. 47:1A-5, these changes shall be published as a public notice in the New Jersey Register, and revised in (a) through a notice of administrative change pursuant to N.J.A.C. 1:30-2.7.

(e) Additional fees may be imposed in connection with a request for government records in accordance with N.J.S.A. 47:1A-1 et seq.

Amended by R.2004 d.317, effective August 16, 2004.
 See: 36 N.J.R. 1869(a), 36 N.J.R. 3880(b).
 Rewrote the section.
 Administrative change.
 See: 42 N.J.R. 2806(b).

SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 4. EXPUNGEMENT OR SEALING OF RECORDS

10A:22-4.1 Procedures for expungement of records and information

(a) Pursuant to N.J.S.A. 2C:52-1 et seq., whenever the Administrator of a correctional facility, administrative supervisor or staff member receives an Order from the Courts or from the Central Reception and Assignment Facility (C.R.A.F.) directing the expungement of inmate records, all records and information that are subject to said Order of Expungement shall be removed from the files and forwarded to C.R.A.F.

(b) Inmate records shall include, but not be limited to:

1. Classification;
2. Identification;
3. Medical/mental health;
4. Education;
5. Professional services;
6. Payroll;
7. Business office;
8. Management control;
9. Operations;
10. Special Investigations Division; and
11. Mail records.

(c) To avoid any confusion and/or complication relative to permanent numerical files that may be maintained in various

areas, a blank card reflecting only the appropriate number and in bold print, "NO RECORD," shall be inserted in place of the permanent record being removed.

(d) In the event there are reports, documents or material wherein more than one individual is mentioned, the name of the individual whose record has been expunged may be redacted, rather than purging said record in its entirety.

(e) Any future Court Orders concerning the expunged records shall be forwarded immediately to C.R.A.F.

(f) When an Order of Expungement is received and the individual named in such Order cannot be identified from the files, or if it is determined that the records have been transferred to another location or holding area, the Order shall be forwarded immediately to C.R.A.F.

(g) When handling inquiries for information relative to records affected by Orders of Expungement, the appropriate response shall be "NO RECORD."

(h) Disclosure of any information and/or records which have been expunged by Order of the Court is punishable in accordance with N.J.S.A. 2C:52-30.

Administrative change.

See: 32 N.J.R. 303(a).

Amended by R.2004 d.317, effective August 16, 2004.

See: 36 N.J.R. 1869(a), 36 N.J.R. 3880(b).

In (d), substituted "redacted" for "obliterated".

10A:22-4.2 Expungement of disciplinary records

When an inmate is adjudicated not guilty of a disciplinary charge, the inmate's records shall be expunged in accordance

with the procedures outlined in N.J.A.C. 10A:4-9.26, Expungement.

10A:22-4.3 Procedures for sealing juvenile records

(a) Whenever the Administrator of a correctional facility, an administrative supervisor or staff member receives an Order from the Courts or from the Central Reception and Assignment Facility (C.R.A.F.) directing the sealing of juvenile records, all records concerning the inmate set forth in the Court Order shall be forwarded to C.R.A.F. for placement in the established sealed records file.

(b) In accordance with the sealing of records statute at N.J.S.A. 2A:4A-62:

1. All index references shall be marked "NOT AVAILABLE" or "NO RECORD"; and

2. When a correctional facility Administrator, administrative supervisor or staff member receives inquiries for information relative to sealed juvenile records, the appropriate response shall be that there are no records with respect to such juveniles.

(c) Any future Court Orders concerning sealed juvenile records shall be forwarded to C.R.A.F.

(d) Any subsequent conviction of a crime or adjudication of delinquency or in need of supervision has the effect of nullifying the sealing Order.

Amended by R.2004 d.317, effective August 16, 2004.

See: 36 N.J.R. 1869(a), 36 N.J.R. 3880(b).