

Personnel Records Disclosure

OBJECTIVE

It is the Commonwealth's objective to ensure compliance with the Government Data Collection and Dissemination Practices Act and the Freedom of Information Acts. This policy establishes guidelines for access to and release of personal information on employees which is maintained by state agencies.

I. EMPLOYEES TO WHOM POLICY APPLIES

[REVISED 12/94]

This policy applies to positions covered under the Virginia Personnel Act to all classified employees. This policy also applies to positions expressly excluded from coverage of the Virginia Personnel Act. (See section II of Policy 2.20, Types of Employment.)

II. DEFINITIONS

A. Official Records

All written or printed books, papers, letters, documents, maps and tapes, photographs, films, sound recordings, reports or other material, regardless of physical form or characteristics, prepared, owned, or in the possession of a public body or any employee or officer of a public body in the transaction of public business.

B. Personal Information

All information that:

1. Describes, locates or indexes anything about an individual including his or her real or personal property holdings derived from tax returns, and his or her education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment records, or that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual; and the record of his or her presence, registration, or membership in an organization or activity, or admission to an institution.
2. The term does not include routine information maintained for the purpose of internal office administration; nor does the term include real estate assessment information.

C. Third Parties

Individuals other than the subjects of the records, including other state agencies, who request information from the records maintained by agencies.

III. DISCLOSURE OF INFORMATION TO THIRD PARTIES

A. Certain personal information must be disclosed to third parties upon request and may be disclosed without the knowledge and consent of the subject employee.

This information includes:

1. employee's position title;
2. employee's job classification title;

Personnel Records Disclosure

3. dates of employment; and
 4. annual salary, official salary or rate of pay, if such pay exceeds \$10,000 per year.
- B.** Other personal information may not be disclosed to third parties without the written consent of the subject employee. This information includes, but may not be limited to:
1. performance evaluations;
 2. mental and medical records;
 3. credit or payroll deduction information;
 4. applications for employment;
 5. records of suspension or removal including disciplinary actions under the Standards of Conduct, Policy 1.60;
 6. records concerning grievances or complaints;
 7. scholastic records;
 8. records of arrests, convictions, or investigations;
 9. material relating to Workers' Compensation claims;
 10. material relating to Unemployment Compensation claims;
 11. retirement records;
 12. confidential letters of reference or recommendation;
 13. results of pre-employment tests; and
 14. personal information such as race, sex, age, home address, home telephone number, marital status, dependents' names, insurance coverage, or social security number.
- C.** The following individuals/agencies may have access to employee records without the consent of the subject employee. This list is not all inclusive.
1. The employee's supervisor and, with justification, higher level managers in the employee's supervisory chain.
 2. The employee's agency head or designee and agency human resource employees, as necessary.
 3. Specific private entities which provide services to state agencies through contractual agreements (such as health benefits, life insurance, Workers' Compensation, etc.) in order to provide such services.

IV. REQUESTS FOR INFORMATION - GENERAL

- A.** All requests for information about employees by third parties should be directed to the agency's human resource officer. It is not necessary for these requests to be in writing.
1. Requests for information which do not make specific reference to the Virginia Freedom of Information Act should be treated under the requirements of that Act.
 2. Requests under the Virginia Freedom Information Act must be answered by the custodian of the record within five workdays of their receipt. The response must:

Personnel Records Disclosure

- a. provide the requested information; or
 - b. if the records are exempt from disclosure under the Virginia Personnel Act, explain why they cannot be provided (in this case, the specific Code section which exempts the records must be referenced); or
 - c. if portions of the records are exempt and others are not, provide the portions of the information which are not exempt and delete those portions which are, referencing the appropriate section of the Virginia Code which addresses the exemptions.
3. Agencies are not required to provide information when the request is not reasonably specific. Agencies should ask for clarification of such requests.
 4. Agencies are not required to provide information that does not already exist or to convert a record from one format to another in order to comply with requests.
 5. Agencies are not required to interpret official records or to supply additional information which is not part of the records.
 6. Agencies are not required to entertain requests for future records or for continuing records.
 7. If agencies determine that it is impossible to provide the information requested pursuant to the Freedom of Information Act, they must notify the requestor within five workdays.
 8. If agencies find that they are unable to determine if the records are available within the five workday period, they must notify the requestor within this time. The agency then has seven additional days to provide a response as indicated in sections IV(A)(2) above.
 9. If the wrong agency is contacted for information, the agency must, within five workdays, advise the requesting party and, if known, inform the requesting party where to obtain the information.
NOTE: Refer to the Virginia Freedom of Information Act for further information regarding the disclosure of records.
- B.** Employment references should be provided by agency human resource officers.
1. Agencies are under no obligation to provide employment references on current or past employees to prospective employers including other state agencies.
 2. If employment references are provided, the information given should be accurate, verifiable and should be limited to employment-related information.
- C.** Before releasing employment references (information discussed in section III(B)), written authorization from the subject employee should be received. (See Attachment I.)
- D.** Employee information needed to affect transfer, rehire, etc., may be released to other state agencies by telephone.

Personnel Records Disclosure

V. REQUESTS FOR INFORMATION - COURT ORDERS

- A. Agencies must comply with subpoenas ordering employee records to be turned over to the court.
- B. Agencies may inform subject employees of such subpoenas, but are not required to do so.
- C. When the court requests but does not order employees' files, copies of the requests and files should be forwarded immediately to the Attorney General's Office. That office will respond to the request.

VI. REVIEWING PERSONNEL FILES

- A. Employees have access to information retained in all personnel files of which they are the subject, in accordance with law. Two exceptions are provided below.
 - 1. When employees' physicians have requested in writing that employees' medical and/or mental health records remain confidential, their request shall be honored and employees will be denied access to those records.
 - 2. Under the provisions of the Freedom of Information Act (Va Code §2.2-3705.1), most state agencies must make employment references and letters of recommendation available to the individual who is the subject of these materials. Educational agencies and institutions are exempted by §2.2-3705.4 of that Act from the requirement to release these documents to the subject of the material.
- B. Individuals seeking access to their personnel files should arrange an appointment with their agency human resource officer.
 - 1. Employees are not required to obtain their supervisors' approval prior to reviewing their official personnel file. However, they must provide adequate notice to supervisors when they wish to obtain releases from work to review their files.
 - 2. Agency human resource officers may designate the location in which personnel files may be reviewed.
 - 3. Human resource officers must remove medical and/or mental health records and may remove confidential letters of reference from the files before they are reviewed. (See section VI(A) above.)
 - a. In educational institutions only, confidential letters of reference may be removed from the file before it is released for review.
 - b. Medical and/or mental health records may NOT be kept in the personnel file but must be retained separately. The subject of these records has access to them UNLESS the physician has requested that the records not be shared with the subject.
 - 4. A representative of the human resource office normally should be present during the review of personnel files. However, supervisors are not required to be present while employees review their personnel files.

Personnel Records Disclosure

5. Employees will not be charged for reasonable time away from work to review their files.
 6. Releases from work to review files will be granted based on agencies' needs.
- C.** Employees may review supervisors' files of which they are the subject.
1. Employees should make arrangements with their supervisors to review these files.
 2. The supervisor or a designee normally should be present during the review.

VII. COPYING RECORDS

Agencies may charge fees for providing information to requestors. These charges may not exceed the actual cost of providing the information. Charges may include the actual copying costs plus the costs for labor involved in locating and copying the information.

VIII. AGENCY RESPONSIBILITIES

- A.** Agencies should review information which is maintained to ensure it is accurate and have a process available by which inaccurate information can be corrected.
1. Subject employees should be informed of their right to correct information in their files and the process by which it can be corrected.
 2. If information is changed or purged, subject employees should be notified.
- B.** Agencies are encouraged to institute a written request policy for individuals seeking personal information.
- C.** Agencies should record names of those third party entities who have had access to personal information in employees' files over the last three years.
- D.** Agencies must take every reasonable precaution to ensure security of employees' personnel files.
- E.** Agency heads and human resource officers are responsible for establishing written procedures for agency personnel to follow when responding to requests for work references. Such procedures should be communicated to all employees.
- F.** Agency heads and human resource officers are responsible for notifying employees regarding appropriate handling of confidential information as well as disciplinary actions which may be taken for violations of confidentiality or this policy.
- G.** Agency heads and human resource officers are responsible for the consistent application of this policy within their agency or facility.

IX. AUTHORITY AND INTERPRETATION

This policy is issued by the Department of Human Resource Management pursuant to the authority provided in Chapter 12, Title 2.2, of the Code of Virginia. This policy supersedes Policy 6.01, Personnel Records Maintenance, issued November 1, 1981; Policy 6.02, Release of Information for Employees Records, issued July 1, 1978; and

Personnel Records Disclosure

Rules 13.1, Central Records, 13.2, Agency Records, and 13.3, Agency Reports, of the Rules for the Administration of the Virginia Personnel Act, effective July 1, 1977.

The Director of the Department of Human Resource Management is responsible for official interpretation of this policy, in accordance with section 2.2-1201 of the Code of Virginia. Questions regarding the application of this policy should be directed to the Department of Human Resource Management's Agency Human Resource Services. The Department of Human Resource Management reserves the right to revise or eliminate this policy.

Personnel Records Disclosure

ATTACHMENT I

CONSENT TO RELEASE INFORMATION

I, Employee's Name, hereby authorize Agency's Name to release information regarding Subject of Request to Third Party.

I agree to hold the agency harmless for the way in which the requesting entity uses the information.

Employee Signature

Date