

1.1.E.3 Offender Access to DOC Records

I Policy Index:



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II Policy:

Records regarding individual offenders, facilities, staff and agency operations are the property and responsibility of the Department of Corrections (DOC). Certain records, held and/or created by the DOC, are deemed confidential. Offenders may access public records in accordance with chapter 1-27, DOC policy, laws and rules. The provisions of this policy do not supersede more specific provisions regarding public access or confidentiality to records cited elsewhere in state or federal law.

III Definitions:

Custodian of Records:

The person who maintains the record(s).

Offender:

Any adult inmate sentenced, placed or committed to the DOC, or placed in any facility or program, or a parolee under parole or suspended supervision by Parole Services.

Public Record Officer:

The Secretary of the Department of Corrections (DOC) or designee, to which an official request for a record is directed (See SDCL §§ 1-27-42 and 1-27-43).

Record:

Includes all documents, regardless of physical form, belonging to the state, agency, department, commission, council or committee.

IV Procedures:

1. Offender Requests for Records:

- A. Offender requests for records may be initiated by contacting unit staff, supervising parole agent or other person or entity with authority over the record(s) requested.
- B. Those receiving the request shall determine an appropriate person with authority to review and respond to the request. If the offender has requested access to a public record, the request shall be forwarded to the Custodian of the Records or designee.

1. The custodian or designee shall consider the request and determine an appropriate response, which may include charging the inmate a reproduction fee of up to \$0.5 per sheet of copy paper. If the request is for public records, and the estimated time to locate, assemble and reproduce the record is projected to exceed one (1) hour, the offender may be assessed an additional fee. The record may be held until payment has been received by the DOC (See SDCL § 1-27-35).
2. For requests for public records which are projected to exceed \$50.00 in costs, the custodian shall provide an estimate of the total cost to the offender prior to assembling the record(s). The custodian shall wait for written confirmation from the offender stating his/her acceptance of the cost and agreement to pay the entire cost (See SDCL § 1-27-36), before locating, assembling and reproducing the requested record(s).
 - a. Upon receipt of written acceptance from the offender, staff will assign the actual cost to request. The offender will be informed of the cost and shall submit a signed commissary slip (for incarcerated offenders) or make other arrangements cover the cost due, subject to approval (See DOC policy 1.1.B.2 *Inmate Accounts and Financial Responsibility*).
 - b. The custodian may exercise his/her discretion in waiving or reducing fees associated with fulfilling the records request, if the waiver or reduction is determined to be in the public interest (See SDCL § 1-27-36).
- C. An offender's request for any record held by the DOC may be denied, if release of the requested record(s) is contrary to state or federal statute, rules regarding public access, violates DOC policy, or contradicts the legitimate penological interests of the DOC.
 1. Information or records that could be used to locate or harass an offender's victim or the victim's family, or which could disclose confidential or privileged information about the victim or their family, will not be released to an offender.
 - a. The victim may be notified by the custodian/DOC if an offender requests such information.
- D. If an offender's request for a public record is denied in whole or part by the custodian, a formal written request may be made by the offender and sent to the Public Records Officer (See SDCL § 1-27-37).
 1. The Public Records Officer will respond in writing to the offender's written request no later than ten (10) business days from receipt of the request. The response will state one of the following:
 - a. Approval of the request, in whole or in part. The records may be provided immediately or held, subject to receipt of payment for the designated cost; or
 - b. Denial of the request for records- which will include a written statement of the reasons for the denial; or
 - c. Acknowledgement of receipt of the request and an estimate of the time and any known costs to respond to the request.
 - 1) If the request is unclear, the public record officer may require the offender clarify the request or provide additional information about the request. If the offender fails to respond within ten (10) business days, no further action is required by the Public Records Officer.
 2. If the Public Records Officer fails to respond to an offender's written request within ten (10) business days, the request shall be deemed denied.
- E. The custodian or the Public Records Officer or designee shall maintain a record of all requests for records which are denied (See SDCL § 1-27-1.4).

- F. In response to any offender request for records made pursuant to chapter 1-27, the Public Records Officer may redact any portion of a record provided to an offender which contains information precluded from public disclosure or if released, would unreasonably invade personal privacy, threaten public safety or security of the institution, or disrupt the normal operations of the DOC (See SDCL § [1-27-1.10](#)).

2. Restricted Information:

- A. The DOC may deny access to, (including producing copies of the record) the following information, records and documents (See SDCL §§ [1-27-1.5](#), [1-27-1.13](#) and [24-2-20](#)) (this is not intended to be an inclusive list of restricted or protected records):
1. Records that include the identity of cooperating individuals, confidential informants or witnesses, if such disclosure may subject the individual to risk or harm.
 2. Maps, diagrams, blueprints, building plans, videos/recordings, schematics or infrastructure records for any building, facility or grounds owned, leased or operated by the DOC that houses offenders, or any information regarding the security system, computer and/or communications network, schedules or other information of the DOC, that through disclosure, may compromise the security of critical systems of the DOC. Exceptions may be approved by the Warden or Deputy Warden for offenders working on construction/maintenance projects within the facility who are under the direct supervision of DOC staff, i.e. the immediate work supervisor.
 3. Records that contain information, files, operational manuals, policies, procedures, OMs, post orders or other like information that, if released, would jeopardize or endanger the security or disciplined operation of the DOC or pose a threat to the safety of any person or the public.
Note: This does not apply to an offender's attorney requesting certain information subject to disclosure.
 4. Certain records that contain reports, memoranda or other documents prepared specifically for the South Dakota State Attorney General's Office, DOC legal counsel or any other attorney retained by the State of South Dakota, subject to any privilege recognized in chapter 19-13.
 5. Any records containing emergency or disaster response plans and related protocol, training, strategic or tactical information; safety or security audits and reviews; lists of emergency or disaster response personnel, materials or location of material or personnel; or listings of security equipment.
 6. Records that include the personal correspondence, memoranda, notes, calendars, appointment logs or other personal records or documents of any public official.
 7. Records deemed confidential or made closed or confidential by court order, state or federal law or rule (See DOC policy 1.1.A.2 [Policy and Operational Memorandum Management](#)).
 8. Any record where a determination is made by the Secretary of Corrections, the Executive Director of the Board of Pardons and Paroles or Warden that the release of a record would result in:
 - a. Substantial risk of retaliation; or
 - b. Disclosure of the DOC's position in litigation.
 9. Access to professional records or evaluations may be denied if it is determined by the Secretary of Corrections, Director of Prison Operations, Warden, Executive Director of the Board of Pardons

and Paroles, Director of Correctional Health or Behavioral Health Director or designee that the content of the record, if known by an offender, could result in disruption of rehabilitation.

10. Records of offender NCIC III reports obtained or held by the DOC.
 11. Certain offender records that include an offender's history and conduct that are developed and maintained by the DOC, including but not limited to written or electronically generated or stored documentation or records of the offender's institutional adjustment and rehabilitative progress (See SDCL §§ [24-2-17](#), [24-2-19](#), [24-15A-14](#), [24-15-1](#) and [24-2-20](#)).
 12. Any record that contains information intended to prevent or mitigate criminal acts and/or protect the security and safety of the public or manage and/or respond to emergencies.
 13. Any record that includes documents, databases or personnel records which if disclosed, would constitute an unreasonable release of personal information, e.g., social security numbers, passport numbers, driver license numbers, personal pin numbers, passwords/pass codes, debit, credit card or bank account numbers.
- B. In no case will an unauthorized or unapproved person be given access to or provided an offender's legal or institutional file/record. No offender will be provided access to another offender's legal, institutional or medical records, or receive such records through an unauthorized means (See DOC policy 1.1.E.1 [Adult Offender Case Records Content and Management](#)).
- C. DOC staff will not disclose records that include the contents of an offender's Pre-Sentence Investigation (PSI) to unauthorized persons, without written order from the sentencing judge or his/her successor (See SDCL § [23A-27-10](#)).
- D. An offender will not be provided certain records generated and deem confidential by Parole Services (See SDCL §§ [24-15-1](#) and [24-15A-14](#)). Parole staff may apply exceptions if the request is for records pertinent to the offender which is not otherwise held in confidence by law.
- E. Staff will exercise due diligence when allowing offenders to view or work with databases containing records of other offenders.
1. Offenders are not permitted access to databases that contain records of other offender's classification levels, crimes, release dates, disciplinary records, social security numbers or any other information that could compromise the safety or security of persons or the institution.
 2. If staff is in doubt about whether to allow an offender access to a specific record, staff will consult with their supervisor.
- F. An offender will not be provided the original copy of his/her social security card or birth certificate record if the card or record was obtained through the processes and procedures contained within DOC policy 1.1.A.7 [Inmate Identification Procedures](#). The record shall be released to the inmate upon the offender's final discharge from the DOC (See Section 9 of the policy).

3. Release of Information to an Offender:

- A. An offender will be provided:
1. One (1) free copy of his/her commitment papers documenting the judgment and sentence upon admission.
 2. One (1) free copy of any amended commitment papers at or about the time the amended paperwork is received by the DOC.

3. One (1) free copy of any warrants, holds or detainers on or about the time the record is received by Central Records staff.
- B. An offender may request copies of his/her institutional records, including paper or electronic records, by submitting a written request (kite) to his/her assigned unit team or parole staff.
- C. An offender wishing to review his/her own health records for the time he/she was incarcerated in a DOC facility, may submit a written request to the Clinical Supervisor or designee (for medical records) or the Clinical Director or designee (for mental health records). The request shall describe the specific record(s) requested. Health records generated by outside providers may remain the property of the provider and may require release permission from the provider. Requests for health records that are not part of the offender's institutional health record, which were generated while the offender was in DOC custody, must be sent to the record holder.
1. Health Services and Behavioral Health staff shall respond to an offender's request for his/her health records.
 2. Offenders may be provided copies of health records by Health Services or Behavioral Health staff, as deemed appropriate. The offender may be assessed a fee for the cost of duplication of 5 cents per copy.
 3. An offender may be charged a co-pay fee when initiating a visit to Health Services to receive or review his/her medical records (See DOC policy 1.4.E.10 [Medical Services Copayments](#)).
 4. Offenders requesting records of psychological or psychiatric evaluations, reports or files contained within their institutional health records, may be required to obtain written permission from the author of the material prior to release of the record.

4. Progress Reports:

- A. Progress reports are prepared by the offender's assigned unit staff and approved by the Warden. The report may be released to a Judge, court service worker representing the Judge, prosecuting attorney, inmate's attorney or other correctional agencies.
- B. The request to prepare a progress report must come from the sentencing Judge, a court services worker, the prosecuting attorney, the inmate's attorney or other correctional agencies.
1. An offender may not request a progress report on his/her own behalf.

V Related Directives:

- SDCL §§ [1-15-20.1](#), [1-27](#), [23A-27-10](#), [24-2-17](#), [24-2-19](#), [24-2-20](#), [24-15-1](#) and [24-15A-14](#)
DOC policy 1.1.A.2 – [Policy and Operational Memorandum Management](#)
DOC policy 1.1.A.7 -- [Inmate Identification Procedures](#)
DOC policy 1.1.B.2 -- [Inmate Accounts and Financial Responsibility](#)
DOC policy 1.1.E.1 – [Adult Offender Case Records Content and Management](#)
DOC policy 1.1.E.4 – [Release Notification Requests](#)
DOC policy 1.3.C.2 – [Inmate Discipline System](#)
DOC policy 1.3.E.2 – [Administrative Remedy for Inmates](#)
DOC policy 1.4.E.10 – [Medical Services Copayments](#)
DOH policy P-H-01 – [Health Record Format and Contents](#)
DOH policy P-H-02 – [Confidentiality of Health Records and Information](#)

VI Revision Log:

June 2002: Defined Offender and changed Inmate to Offender where applicable.

June 2003: Added reference to policy 1.1. E.1. Noted that record requests could be turned down if contrary to another DOC policy. Merged former Attachment 1 into the policy section **Release of Information to an Offender**. Changed the name of the policy to *Offender Access to Records*. Added rule and law as other reasons to deny requests for records. Changed wording in item "A" of **Information Restricted from Offenders**.

May 2004: Added reference to SDCL § 23A-27-10, 24-15-1 and 24-15A-14. Deleted section title Offender Access to Files and moved contents to other sections. Added reference to DOH policies PH 01 and PH 02. Noted that offenders cannot access case history documents from the Parole Department. Changed Director of the Board of Pardons and Paroles to the Executive Director.

June 2004: Noted that DOC staff will not provide inmates with a copy of their NCIC III or permit an inmate to view his/her NCIC III.

May 2005: Added language restricting inmate access to information on databases. Added language regarding medical co-pay and a reference to policy 1.4. E.10.

May 2006: Updated referenced policy name. Added confidential notifications as an item that inmates will not be given access to. Changed the area to request additional copies of sentencing paperwork from Central Records to Unit Staff. Added a requirement that progress reports are approved by the Warden. Deleted the voting records of the Board of Pardons and Paroles as an item inmate are denied access to. Clarified that inmates working on construction/maintenance projects can have access to some diagrams, etc. of a DOC facility.

May 2007: Rewrote the section on Release of Information to an Offender to clarify what an inmate may have copies of and when. Moved information on progress reports to a separate section. Deleted the reference to the security of the institutional file.

April 2008: Revised formatting of policy in accordance with DOC policy 1.1.A.2 Policy and Operational Memorandum Management. Added to the (Policy statement) that these records are generally confidential, therefore offenders may access specified portions of these records as outlined in this and other DOC policies, OMs and rules. Replaced "unit team" to "unit staff" throughout policy. Replaced "operational memorandum" to "OM or OMs" throughout policy. Replaced "work supervisor" to "Immediate Work Supervisor" in subsection (A-3 of Information Restricted from Offenders section). Added "DOC Council" to subsection (A5 of Information Restricted from Offenders section) regarding reports prepared for SD State Attorney General's office or any other attorney retained by the state of SD. Clarified policy to read "DOC policy" when speaking of records already denied to an offender through another policy, procedure, OM, post order or directive. Replaced "inconsequential" with "unrelated" when speaking of records unrelated to an offender's rehabilitation. Clarified in subsection (B of Information Restricted from Offenders section) to state that in no case will an offender be given information from another inmate's file. Added "or Executive Director of Board of Pardons and Parole" in subsection (E2 of Information Restricted from Offenders section) relating to offender's access to a database. Added in subsection (B and D of Release of Information to an Offender section) that specific information from his/her own file may be viewed by the offender. Added sentence stating that inmates may receive a copy of their photo for purposes of securing identification documents and as a discharge ID in subsection (D1a of Release of Information to an Offender section). Revised order of numbers 1, 2 and 3 in subsection (E of Release of Information to an Offender section). Removed "Executive Director" in subsection (10 of the Information Restricted from Offenders section). Replaced "reprisal" with "retaliation" in subsection (10a of the Information Restricted from Offenders section). Replaced "want" with "request" for offenders requesting to review their health records. Added "or to review" when speaking of inmates requesting copies of their psychological or psychiatric files. Deleted "Release of information signed by the offender is not required for progress reports unless the offender has discharged" from subsection (B of Progress Reports section). Deleted "Parent's Signature" on Attachment 3 and added DOC policy Offender Access to Records in header and revised formatting of "Person/Organization/Address). Revised other minor grammatical changes throughout policy.

March 2009: Replaced inmate with offender when appropriate throughout policy. Added reference to SDCL 24-2-20 within ss (A of Information Restricted from Offenders) and within (Section V). Revised minor wording throughout policy.

April 2010: Revised formatting of Section 1. Deleted reference to offenders within definition of Custodian of Records. Added SDCL 1-27-42 to definition of Public Record Officer. Revised policy significantly in accordance with SDCL 1-27. Deleted DHS policies P-H-01 and P-H-02 in ss (E of Release of Information to an Offender. Deleted Attachment 1.

May 2011: Replaced term "Requester" with "Offender throughout the policy. Added "Offenders will submit a signed commissary slip for the amount due." to Section 1 ss 2. Added "An offender may not exceed the \$35.00 per week withdrawal limit from their spend account for records fees, incur a negative balance or go further into the negative in order to obtain these copies." to Section 1 ss 2. Added "or copies of" to Section 2 A. Added "records and/or documents" to Section 2 A. Added "or property" to Section 2 A. 9 b. Added written documentation of to Section 2 A. 12. Deleted "and medical history" from Section 2 A. 12.

May 2012: Deleted "written" in Section 1 B. Deleted "reproduction" and Replaced with "locating, assembling and reproducing the record" and Added "dedication of staff time" and Added "The record will only be provided after payment for all costs has been received" in Section 1 B. 1. Added "accepting the cost" in Section 1 B. 2. a. Added "state or federal statutes or rules regarding public access or confidentiality" to Section 1 C. Deleted 1. "If denied, or no response is received from the custodian of the record, the offender may submit a written request to the public records officer" in Section 1 C. Deleted "informants" and Replaced with "cooperating individuals, confidential informants" in Section 2 A. 2. Added "or made closed or confidential by state or federal statute or rule" in Section 2 A. 8. Added 14. to Section 2 A. Added "Parole staff may apply certain exceptions if the request is for information/records pertinent to the offender which are not otherwise held in confidence by law." in Section 2 D. Added "containing information or records regarding offenders." in Section 3 E. Added "included in their institutional health records" in Section 3 E. 4.

February 2013: Deleted "Copies of the offender's query sentence (QS) screen or his/her NCIC III Report" and Deleted "to view this screen from a staff person's computer" and Replaced with "copies of to view their NCIC III reported obtained by the DOC" in Section 2 A. 11. Added "or electronically generated or stored" to Section 2 A. 12. Deleted "Personnel information or other records" and Replaced with "Any stored records, documents, databases" and Added "or bank account numbers" in Section 2 A. 14. Added "offender social security numbers" to Section 2 E. 1. Deleted "Criminal History (minus any active protection orders) from the Citrix database" in Section 2 B. Deleted "housing" Deleted "work and Replaced with "history, Added "approved list" and Deleted "summary screen; and date computation worksheet(s) and Replaced with "sentence key dates" in Section 2 B. 2. Added "Section details from the latest" and Deleted "documents" and Replaced with "assessment" and Deleted "limited to the initial and reclassification custody forms" in Section 3 D. 2. Added "Outside medical records remain the property of the outside provider. Any requests for medical records generated by an outside provider must be directed to the outside provider" in Section 3 E.

April 2014: Added "The provisions of this policy do not supersede more specific provisions regarding public access or confidentiality elsewhere in state or federal law" to Policy statement. Added definition of "Record". Deleted "\$.15 and Replaced with "\$.25" and Deleted "will only be provided after" and Replaced with "may be held until" in Section 1 B. Deleted "informal" in Section 2 B. 2. Deleted b. "An offender may not exceed the \$35 per week withdrawal limit from their spend account for records fees, incur a negative balance or go further into the negative in order to obtain these copies" in Section 1 B. 2. Deleted "Unit or parole staff may deny" and Added "may be denied" in Section 2 C. Deleted "to the offender upon payment of any applicable fee" and Replaced with "The records may be provided immediately or withheld subject to receipt of payment for applicable costs associated with retrieval" in Section 1 D. 1. a. Added "which will include a written statement of the reasons for denial" and Added 1) in Section 1 D. 1. c. Added F. to Section 1 Deleted "will" and Replaced with "may" in Section 2 A. Added "documents or records of communications used for the purpose of decisional or deliberative purposes" and Added "arising from the staff member's official duties" in Section 2 A. 1. Deleted "information given in confidence" and Replaced with "records/information provided by such individuals/informants that is part of an examination, investigation, intelligence information, or inquiry" in Section 2 A. 2. Added "blueprints, building plans" and Added "or infrastructure records for any building or grounds owned or leased by the DOC or any information regarding the security systems, computer or communications networks, scheduled, or other information that through disclosure would compromise the security of critical

systems” and **Added** “Warden or Deputy Warden” to Section 2 A. 3. **Added** “files, operations” in Section 2 A. 4. **Deleted** “during the course of litigation” and **Replaced** with “which are subject to any privilege recognized in Chapter 19-13” in Section 2 A. 5. **Deleted** “Law enforcement or Special Security investigative reports” and **Replaced** with “Any emergency or disaster response plans or protocols, training protocol or strategic or tactical information used in training, safety or security audits or reviews, lists of emergency or disaster response personnel or material or location or listing of security equipment” in Section 2 A. 6. **Deleted** “Any information not originated or written by DOC personnel” and **Replaced** with “The personal correspondence, memoranda, notes, calendars, or appointment logs, or other personal records or documents of any public official or employee of the DOC” in Section 2 A. 7. **Added** “court order” to Section 2 A. 8. **Deleted** “Additional copies from what is initially provided to the offender involving a disciplinary violation or administrative grievance” and **Replaced** with “Any information intended to prevent or mitigate criminal acts, protect the security and safety of the public or manage emergencies and/or respond to emergencies” in Section 2 A. 13. **Added** F. to Section 2. **Added** “personnel records” in Section 2 A. 14. **Deleted** “an offender with copies or any information regarding official statements, a pre-sentence investigation (PSI) or notifications” and **Replaced** with “the contents of the offender’s Pre-sentence Investigation (PSI) without written order from the sentencing judge or his/her successor” in Section 3 C.

April 2015: **Deleted** “Any individual voting records, documents or records of communications used for the purpose of decisional or deliberative purposes by members of any institutional classification committee or institutional disciplinary committee arising from the staff member’s official duties” in Section 2 A.

April 2016: **Reviewed** with no changes.

April 2017: **Reviewed** with no changes.

May 2018: Minor language updates.

November 2018: **Added** “or the other person or entity with authority over the record(s) requested” in Section 1 A. **Deleted** “.25 cents” and **Replaced** with “.5 cents” in Section 1 B. 1. **Added** “violates DOC policy or contradicts the legitimate penological interests of the DOC” in Section 1 C. **Deleted** C. in Section 3. **Added** “or designee” in Section 3 D. **Added** “Requests for health records that are not part of the offender’s institutional health record, which were generated while the offender was in DOC custody, must be sent to the record holder” in Section 3 D

Denny Kaemingk (original signature on file)

12/03/2018

Denny Kaemingk, Secretary of Corrections

Date