

1.1.E.3 Offender Access to DOC Records

I Policy Index:



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II Policy:

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

III Definitions:

Custodian of Records:

The person who maintains the record.

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, the offender's supervising parole agent, or other person or entity with authority over the record(s) requested by the offender.
- B. Those receiving the request shall determine the person or entity with authority to review and respond to the offender's request. If the request is for access to public records that are not part of the offender's records, the request may be forwarded to the custodian of the record or designee.

1. The custodian or designee shall consider the request and determine an appropriate response, which may include charging the offender a fee of up to \$0.05 per copy/sheet. 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 identified record(s) may be held until payment has been received by the DOC (See SDCL § 1-27-35).
2. If the offender's request for public records is projected to exceed \$50.00 in total costs, the custodian shall provide an estimate of the 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 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 actual cost and shall submit payment for the costs due (See DOC policy 1.1.B.2 *Inmate Accounts and Financial Responsibility*).
 - b. The custodian may exercise discretion in waiving or reducing the cost associated with fulfilling the records request, if determined to be in the public interest (See SDCL § 1-27-36).
- C. An offender's request for a record held by the DOC may be denied if release of the record is contrary to state or federal law, rules regarding public access, 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(s) or family; or that disclose confidential or privileged information about the victim(s) or family, will not be released to an offender (See DOC policy 1.1.E.4 *Victim Notification*).
- 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 described within 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 any portion, which 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, (including producing copies of the record) to 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 house 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 facility or department. Exceptions may be approved by the Warden or Deputy Warden for offenders working on construction/maintenance projects within the facility to review certain non-safety or security sensitive blueprints or maps if under the direct supervision of DOC staff, i.e. the immediate work supervisor.
 3. Records that contain information, files, operational manuals, policies, processes, procedures, responses, such as post orders or emergency response manual, or other like information that, if released, could jeopardize or endanger safety, security or disciplined operation.

Note: An exception may be granted for an offender's attorney requesting such information that may be 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 or department, subject to any privilege recognized in chapter 19-13.
 5. Any records containing emergency or disaster response plans, protocol, training, strategic or tactical information; safety or security audits and reviews; lists of emergency or disaster response personnel, materials or location of said 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.
 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 could 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, Warden or Director that the content of the record, if known by an offender, could result in disruption of the offender's 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 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; protect the security and safety of the public; or manage and respond to emergencies.
 13. Any record that includes documents, databases or personnel records, which if disclosed separately or in combination with other information, would constitute an unreasonable release of personal identifying information (PII), e.g., social security numbers, birth dates, 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 any 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 deemed 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 or information pertaining to other offenders.
1. Offenders are not permitted to access to databases that contain records of other offender's classification levels, crimes, release dates, disciplinary records or social security numbers.
 2. If in doubt about whether to allow an offender access to records or information, 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 or card will be released to the offender upon final discharge from DOC custody (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 additional 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. A fee may apply.
- C. An offender wishing to review his/her own health records generated while he/she was in DOC custody, 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 authorization prior to release 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 by the offender to the record holder.
1. Health Services and Behavioral Health staff shall respond to requests by an offender to access his/her health record.
 2. Offenders may be provided copies of specified 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 .05 cents per sheet.
 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 §§ chapter 1-27, chapter 19-13, [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 – [Victim Notification](#)

DOC policy 1.4.E.10 – [Medical Services Copayments](#)

DOH policy P-A-08 – [Inmate Health Records](#)

VI Revision Log:

Removed revisions from June 2002-March 2009.

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.

July 2019: **Reviewed** with no changes.

April 2020: **Reviewed** with no changes.

Mike Leidholt (original signature on file)

Mike Leidholt, Secretary of Corrections

04/30/2020

Date