

## 1.1. E.3 Offender Access to DOC Records

### I Policy Index:



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**Office of Primary Responsibility:** DOC Administration

### II Policy:

Records regarding individual adult offenders, facilities and agency operations are the property and responsibility of the Department of Corrections. Certain records are deemed confidential by law. Offenders may access public records as detailed in SDCL Chapter § 1-27 and as permitted by DOC policy and applicable rules. The provisions of this policy do not supersede more specific provisions regarding public access or confidentiality cited elsewhere in state or federal law.

### III Definitions:

#### **Offender:**

For the purpose of this policy, an offender is any adult inmate (sentenced, placed or committed to or placed in any facility or program under the control of the DOC or parolee (under parole or suspended supervision by South Dakota Parole Services).

#### **Custodian of Records:**

For the purposes of this policy, the Custodian of Records (custodian) is the person who maintains the records.

#### **Public Record Officer:**

For the purposes of this policy, the Public Record Officer is the Secretary of the Department of Corrections (DOC) or his/her designee, to which a request for records is directed (See SDCL §§ 1-27-42 and 1-27-43).

#### **Record:**

Includes all records and 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 documents or records will generally be made through an offender's unit staff or parole staff, as applicable.
- B. Staff will forward the offender's request for records to the custodian of the record.

1. The custodian of the record may provide the offender with the document or record at a cost of \$0.25 per one sided page (legal sized document) and include the cost of locating, assembling and reproducing the record, if the dedication of staff time exceeds one hour. The record may be held until payment has been received by the DOC (See SDCL § 1-27-35).
2. For offender record requests likely to involve a cost that exceeds fifty (\$50.00) dollars, the custodian shall provide an estimate of the total cost to the offender prior to assembling the documents or records. The custodian shall wait for written confirmation from the offender stating his/her acceptance of the cost and agreement to pay (See SDCL § 1-27-36) before assembling the requested documents or records.
  - a. Upon acceptance of the estimated costs by the offender, staff will assign a cost to complete the request. The offender will submit a signed commissary slip (for incarcerated offenders) or other accepted form of payment for the amount due (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 records may be denied if the request or record requested is contrary to state or federal statute, rules regarding public access, confidentiality, or DOC policy or institutional OMs.
- D. If an informal offender request for records is denied in whole, or in part by the custodian of the record, a written request may be made by the offender to the public records officer (See SDCL § 1-27-37).
  1. The public records officer will respond in writing to the offender's 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 for records in whole, or in part. The records may be provided Immediately, or withheld subject to receipt of payment for applicable costs associated with retrieval; or
    - b. Denial of the request for records- which will include a written statement of the reasons for the denial; or
    - c. Acknowledge receipt of the request for records and provide an estimate of the time reasonably required to further respond to the request.
      - 1) If the request is unclear, the public record officer may require the offender to clarify 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 of the record, or the public records officer (as applicable), 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 record officer may redact any portion of the record provided to an offender which contains information precluded from public disclosure, or if release of the record or portions thereof, would unreasonably invade personal privacy, threaten public safety and security, or disrupt the normal operations of the DOC (See SDCL § 1-27-1.10).

## 2. Restricted Information:

- A. The DOC may deny access to, or copies of the following information, records and/or documents (See SDCL §§ [1-27-1.5](#), [1-27-1.13](#) and [24-2-20](#)).
1. The identity of cooperating individuals, confidential informants or witnesses, if such disclosure may subject the person to risk or harm if their identity is disclosed.
  2. Maps, diagrams, blueprints, building plans, videos/recordings, schematics or infrastructure records for any building, facility or grounds owned or leased by the DOC, or any information regarding the security systems, computer or communications networks, schedules, or other information that through disclosure, may compromise the security of critical systems of the DOC. Exceptions may be approved by the Warden or Deputy Warden for an offender working on construction/maintenance projects within the facility who is under the direct supervision of DOC staff, i.e. the immediate work supervisor.
  3. Records, 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 any DOC facility, or the safety of any person or the public.  
  
**Note:** This does not apply to an offender's attorney requesting information that is subject to disclosure.
  4. Reports, memoranda, or other documents prepared specifically for the South Dakota State Attorney General's Office, DOC counsel or any other attorney retained by the State of South Dakota, subject to any privilege recognized in Chapter [19-13](#).
  5. Any emergency or disaster response plans or protocols, training protocol or strategic or tactical information used in training; safety or security audits/reviews; lists of emergency or disaster response personnel, material, location of material or personnel; or listings of security equipment.
  6. The personal correspondence, memoranda, notes, calendars, appointment logs or other personal records or documents of any public official.
  7. Any record deemed confidential through DOC policy or made closed or confidential by court order, or state or federal statute 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, Warden or designee that the release of such information would result in:
    - a. Substantial risk of retaliation.
    - 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 the Executive Director of the Board of Pardons and Paroles that the information, if known by the offender, could result in disruption of his/her rehabilitation.
  10. Offender NCIC III reports obtained or held by the DOC.
  11. The offender's record, 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 information intended to prevent or mitigate criminal acts and/or to protect the security and safety of the public or manage and/or respond to emergencies.
  13. Any stored records, 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 person be provided access to or be given any offender's legal or institutional file/record. No offender will be provided access to another offender's legal or institutional file or medical record or be given information contained in said file(s) or record(s) (See DOC policy 1.1.E.1 [Adult Offender Case Records Content and Management](#)).
- C. DOC staff will not disclose the contents of an offender's Pre-sentence Investigation (PSI) 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 by Parole Services (See SDCL §§ [24-15-1](#) and [24-15A-14](#)). Parole staff may apply certain exceptions if the request is for information/records pertinent to the offender which is not otherwise held in confidence by law.
- E. Staff will exercise due diligence in allowing offenders to view or work with a database containing information or records regarding offenders.
1. Offenders are not permitted access or use of any database that contains information on any individual offender classification levels, individual offender crimes, offender release dates, offender disciplinary records, offender social security numbers or any other information that could compromise the safety or security of an offender or the institution.
  2. If staff is in doubt about whether to allow an offender access to a specific database, staff will consult with the respective Warden or Executive Director of Board of Pardons and Parole or designee before allowing an offender to access the database.
- F. An offender will not be provided the original copy of his/her social security card or birth certificate record if these records were obtained through the processes and procedures contained within DOC policy 1.1.A.7 [Inmate Identification Procedures](#), until/unless the offender is released from the custody of the DOC (See Section 9 of DOC policy 1.1.A.7).

### **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 the following information from his/her own record by submitting a written request (kite) to his/her assigned unit team or parole staff:
  - 1. Computer generated disciplinary history, approved visitors list and sentence key dates.
- C. Offenders may be provided copies of approved documents as provided for through DOC policy and/or institutional OMs, i.e., inmate banking statements.
- D. An offender may view the following records; however, the offender will not be provided copies:
  - 1. Physical description/pictures.
    - a. Offenders will be issued a DOC generated photo ID upon discharge/release.
  - 2. Section details from the latest classification assessment.
  - 3. Accident reports which have been placed in the offender's legal file.
- E. An offender who wishes to review his/her own medical records for the time he/she was incarcerated in a DOC facility may submit a written request to the Clinical Supervisor (for medical records) or the Clinical Director (for mental health records), indicating the specific record being requested. Medical records generated by outside providers remain the property of the provider.
  - 1. Health Services/Mental Health staff shall respond to the offender's request for medical records.
  - 2. Offenders may be provided copies of medical records by health service/mental health staff, as deem appropriate. The offender may be assessed a fee for the cost of duplication and/or retrieval or the records.
    - a. An offender cannot incur a negative balance or further increase an existing negative balance in their institutional banking account(s) to obtain these copies.
  - 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 *Inmate Medical Co-Pay*).
  - 4. Offenders requesting psychological and/or psychiatric evaluations, reports or files included in their institutional health records must obtain written permission from the author of the material prior to duplication, release or review of the report/file/record.
    - a. The offender is responsible for contacting the author regarding the request for reports/records/files.

#### **4. Progress Reports:**

- A. Progress reports are prepared by the offender's assigned unit staff, approved by the Warden and may be released to a judge, court service worker representing the judge, the prosecuting attorney, the 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 – [Inmate Medical Co-Pay](#)

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 inmates 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 offenders 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.

*Denny Kaemingk (original signature on file)*

Denny Kaemingk, Secretary of Corrections

06/06/2016

Date