

TITLE 14 NYCRR PART 804

[Statutory Authority: Mental Hygiene Law Sections 19.05(f), 19.07(b)(16), 19.07(e), 19.09(b), 19.40, 32.01, 32.07(a), Public Officers Law Article 6, Article 6-A; Executive Law Section 102]

(Statutory authority: Mental Hygiene Law, 19.05(f), 19.07(b)(16); Public Officers Law, Art. 6-A)

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Section 804.1 Purpose.

The purpose of this Part is to implement the provisions of Article 6-A of the Public Officers Law by establishing procedures under which a data subject may have access to records maintained by the Office pertaining to such subject.

Section 804.2 Definitions.

As used in this Part the following terms shall mean:

- (a) "*Office*" means the Office of Alcoholism and Substance Abuse Services of the State of New York, established pursuant to Article 19 of the Mental Hygiene Law.
- (b) "*Commissioner*" means the Commissioner of the Office of Alcoholism and Substance Abuse Services.

(c) "*Committee*" means the Committee on Open Government.

(d) "*Data subject*" means any natural person about whom personal information has been collected by the Office.

(e) "*Personal information*" means any information concerning a data subject which, because of name, number, symbol, mark or other identifier, can be used to identify the data subject.

(f) "*Disclose*" means to reveal, release, transfer, disseminate or otherwise communicate personal information or records orally, in writing or by electronic or any means other than the data subject.

(g) "*Governmental unit*" means any governmental entity performing a governmental or proprietary function for the Federal government or for any state or any municipality thereof.

(h) "*Law*" means any State or Federal statute, rule or regulation.

(i) "*Record*" means any item, collection or grouping of personal information about a data subject which is maintained and is retrievable by use of the name or other identifier of the data subject. The term record shall not include personal information which is not used to make any determination about the data subject if it is:

(1) a telephone book or directory which is used exclusively for telephone and directory information;

(2) any card catalog, book or other resource material in any library;

(3) any compilation of names and addresses only which is used exclusively for the purpose of mailing office information;

(4) personal information required by law to be maintained, and required by law to be used, only for statistical research or reporting purposes;

(5) information requested by the Office which is necessary to answer unsolicited requests by the data subject for information; or

(6) correspondence files.

(j) "*Routine use*" means, with respect to the disclosure of a record or personal information, any use of such record or personal information relevant to the purposes for which it was collected, and which use is necessary to the statutory duties of the Office or is necessary to operate a program specifically authorized by law.

(k) "*System of records*" means any group of records under the actual or constructive control of the Office pertaining to one or more data subjects from which personal information is retrievable by use of the name or other identifier of a data subject.

(l) "*Business day*" means any day except Saturday, Sunday or a public holiday.

Section 804.3 Personal Privacy Compliance Officer.

(a) The Office's Director of the Bureau of Communications and Community Relations, is hereby designated Personal Privacy Compliance Officer and is responsible for ensuring that the Office complies with the provisions of the Personal Privacy Protection Law and these regulations and for coordinating responses to requests for records or amendment of records.

(b) The address of the Personal Privacy Compliance Officer is: New York State Office of Alcoholism and Substance Abuse Services, 1450 Western Avenue, Albany, NY 12203-3526.

Section 804.4 Procedures.

(a) A Person who wishes to determine whether he/she is a data subject in records maintained by the Office may contact the Personal Privacy Compliance Officer, who will assist in identifying such records and, if appropriate, will describe the contents of the Office's system of records orally or in writing.

(b) Requests for access to records must be made to the Personal Privacy Compliance Officer in writing and must reasonably describe the records sought. Whenever possible the data subject should supply identifying information that assists the Office in locating the records sought. Requests will be accepted by mail, or in person at the address of the Personal Privacy Compliance Officer listed in Section 804.3(b) of this Part on any business day between the hours of 9:30 a.m. and 4:30 p.m.

(c) Within five business days of the receipt of a request, the Office shall either provide access to the record or deny access in writing, explaining the reasons therefore, or acknowledge the receipt of the request in writing, stating the approximate date when the request will be granted or denied, which shall be within 30 days from the date of the acknowledgment.

(d) When the record is located, the Office shall:

(1) make the record available for inspection, in a printed form without codes or symbols, unless an accompanying document explaining such codes or symbols is also provided;

(2) if requested, make a copy available, upon payment of or offer to pay the fees authorized by Section 804.10 of this Part, or permit the data subject to copy the record by hand; or

(3) deny access to the record in whole or in part and explain in writing the reasons therefore.

(e) Records or copies shall be made available at the Office of the Personal Privacy Compliance Officer at the address listed in Section 804.3(b) of this Part or where they are kept and shall not be removed from that location without the express written consent of the director.

(f) Proof of identity, by presentation of a driver's license or other documentation or verification of signature or identifying facts, or other means, at the option of the Office may be required of a person making a request.

(g) Upon request, the Personal Privacy Compliance Officer shall certify that:

(1) a copy of a record is a true copy;

(2) the Office does not have possession of the record sought;

(3) the Office cannot locate the record sought after having made a diligent search;

(4) the information sought cannot be retrieved by use of the description provided, or by use of the name or other identifier of the data subject without extraordinary search methods being employed; or

(5) the information is not disclosable under Section 804.5 of this Part.

Section 804.5 Records which are exempt from access by data subjects.

(a) Personal information specifically prohibited by statute from disclosure.

(b) Records concerning mental disability or medical records where access is not otherwise required by law.

(c) Personal information pertaining to the incarceration of an inmate at a State correctional facility which is evaluative in nature or could endanger the life or safety of any person, unless access is otherwise permitted by law or by court order.

(d) Attorney's work product or material prepared for litigation, except pursuant to statute, subpoena issued in the course of a criminal action or proceeding, court ordered or grand jury subpoena, search warrant or other court ordered disclosure.

(e) Public safety agency records.

(f) Records containing information compiled for law enforcement purposes which if disclosed would:

(1) interfere with law enforcement investigations or judicial proceedings;

(2) deprive a person of a right to a fair trial or impartial adjudication;

(3) identify a confidential source or disclose confidential information relating to a criminal investigation; or

(4) reveal criminal investigative techniques or procedures, except routine techniques and procedures.

(g) When providing the data subject with access to information described in paragraph (b) of subdivision 7 of Section 94 of the Public Officers Law, the Office may withhold the identity of a source who furnished said information under an express promise that his or her identity would be held in confidence.

Section 804.6 Correction or amendment of records.

Within 30 business days of a written request from a data subject for correction or amendment of a record or personal information that is reasonably described and that pertains to the data subject, which he or she believes is not accurate, relevant, timely or complete, the Office shall:

(a) make the correction or amendment in whole or in part and inform the data subject that, on his or her request, such correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraph (c) of subdivision 3 of Section 94 of the Public Officers Law; or

(b) inform the data subject in writing of its refusal to correct or amend the record, including the reasons therefore.

Section 804.7 Office's failure to respond.

A failure to grant or deny access to records within 5 business days of the receipt of a request or within 30 days of an acknowledgment of the receipt of such request, or failure to respond to a request for correction or amendment of a record within 30 business days of receipt of such a request, shall be construed as a denial that may be appealed.

Section 804.8 Appeals.

(a) Any person denied access to a record or denied a request to correct or amend a record or personal information pursuant to this Part may, within 30 business days of such denial, appeal in writing to the Counsel at the following address: 1450 Western Avenue, Albany, NY 12203-3526.

(b) In order to be acted upon, the appeal must identify:

(1) the record that it concerns;

(2) the date and location of a request for a record or correction or amendment of a record or personal information; and

(3) the appellant, and list his or her address.

(c) Within 7 business days of an appeal of a denial of access, or within 30 business days of an appeal concerning a denial of a request for correction or amendment, the Counsel shall:

(1) direct the Personal Privacy Compliance Officer to provide access to or correct or amend the record or personal information; or

(2) fully explain in writing the factual and statutory reasons for further denial and inform the data subject of the right to seek judicial review of such determination pursuant to Article 78 of the Civil Practice Law and Rules.

(d) If, on appeal, a record or personal information is corrected or amended, the data subject shall be informed that, on his or her request, the correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraph (c) of subdivision 3 of Section 94 of the Public Officers Law.

(e) The Office shall forward to the Committee on Open Government a copy of any such appeal, upon receipt, and its determination, when made, and the reasons therefore.

Section 804.9 Statement of disagreement by data subject.

(a) If correction or amendment of a record or personal information is denied in whole or in part upon appeal, the Office shall notify the data subject of the right to:

(1) file a statement of reasonable length setting forth the data subject's reasons for disagreement with the determination; and

(2) request that the statement of disagreement be provided to any person or governmental unit to which the record has been or is disclosed pursuant to paragraph (c) of subdivision 3 of Section 94 of the Public Officers Law.

(b) Upon receipt of a statement of disagreement by a data subject, the Office shall:

(1) clearly note any portions of the record that are disputed; and

(2) attach the data subject's statement as part of the record.

(c) When providing a data subject's statement of disagreement to other persons or governmental units pursuant to paragraph (c) of subdivision 3 of Section 94 of the Public Officers Law, the Office may, if it deems appropriate, also include a concise statement of its reasons for not making the requested amendment.

Section 804.10 Fees.

Any fees authorized herein shall be payable in advance.

(a) The fee for photocopies not exceeding 9 x 14 inches shall be 25 cents per page.

(b) The fee for photocopies of records in excess of 9 x 14 inches per page shall be the actual cost of such copying.

(c) The fees for copies of records not covered by paragraphs (a) and (b) of this subdivision, shall not exceed the actual reproduction cost which is the average unit cost for copying a record, excluding fixed costs of the agency such as operator salaries.

(d) In the event that the record is of such a nature that it cannot be photocopied, a transcript of such record shall be made upon request of the applicant. Such transcripts may either be typed or handwritten at the discretion of the Office. In such cases, the requester may be charged for the clerical time involved in making the transcript.

(e) No fee will be charged for:

(1) inspection of records;

(2) searching for records; or

(3) a certification pursuant to this Part.

Section 804.11 Severability.

If any provision of this Part or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons and circumstances.