



October 28, 2021

Administrative Procedure Manual Transmittal Letter No. 386

TO: Administrative Procedure Manual (APM) Holders
FROM: Matt Damschroder, Director
SUBJECT: Employee Access to Confidential Personal Information

This letter transmits the no-change filing of Administrative Code rule 5101:9-22-16, "Employee access to confidential personal information."

This rule has been reviewed in accordance with section 106.03 of the Revised Code, which requires the review of all state agency rules within a five-year period. This rule is required under division (B) of section 1347.15 of the Ohio Revised Code, which requires each state agency to adopt rules regulating access to the confidential personal information the agency keeps, whether electronically or on paper.

No changes have been made to the rule.

Location	Remove and File as Obsolete	Insert
APM Chapter 22	5101:9-22-16 effective 01/11/2016	5101:9-22-16 effective 01/11/2016

5101:9-22-16

Employee access to confidential personal information.**(A) Definitions.**

For the purposes of rules promulgated by this agency in accordance with section 1347.15 of the Revised Code, the following definitions apply:

- (1) "Access" as a noun means an instance of copying, viewing, or otherwise perceiving; whereas, "access" as a verb means to copy, view, or otherwise perceive.
- (2) "Acquisition of a new computer system" means the purchase of a "computer system," as defined in this rule, that is not a computer system currently in place nor one for which the acquisition process has been initiated as of the effective date of this rule.
- (3) "Computer system" means a "system," as defined in section 1347.01 of the Revised Code, that stores, maintains, or retrieves personal information using electronic data processing equipment.
- (4) "Confidential personal information" (CPI) has the same meaning that it does in division (A)(1) of section 1347.15 of the Revised Code. The appendix to this rule identifies, in accordance with division (B)(3) of section 1347.15 of the Revised Code, the federal statutes and regulations and state statutes and administrative rules that make personal information maintained by the agency confidential.
- (5) "Employee of the state agency" means each employee of a state agency regardless of whether he or she holds an elected or appointed office or position within the state agency. "Employee of the state agency" is limited to the specific employing state agency.
- (6) "Incidental contact" means contact with the information that is secondary or tangential to the primary purpose of the activity that resulted in the contact.
- (7) "Individual" means a natural person and in the context used in division (C)(1)(b) of section 1347.15 of the Revised Code, and paragraph (E)(4)(b)(iv) of this rule, means the subject of the confidential personal information, or the authorized representative, legal counsel, legal custodian or legal guardian of the subject of the confidential personal information, or any other similarly situated person who is permitted under state or federal law to act on behalf of, or in furtherance of, the interests of the subject of the confidential personal information, such as an executor or administrator appointed by the court or individual granted power of attorney by the subject of the information. "Individual" does not

include an opposing party in litigation, or the opposing party's legal counsel, or an investigator, auditor or any other party who is not acting on behalf of, or in furtherance of the interests of, the subject of the confidential personal information, even if such individual has obtained a signed release from the subject of the confidential personal information.

- (8) "Information owner" means the individual appointed in accordance with division (A) of section 1347.05 of the Revised Code to be directly responsible for a system.
 - (9) "Person" means a natural person.
 - (10) "Personal information" has the same meaning as it does in division (E) of section 1347.01 of the Revised Code.
 - (11) "Personal information system" means a "system" that "maintains" "personal information" as those terms are defined in section 1347.01 of the Revised Code. "System" includes both records that are manually stored and records that are stored using electronic data processing equipment.
 - (12) "Research" means a methodical investigation into a subject.
 - (13) "Routine" means commonplace, regular, habitual, or ordinary.
 - (14) "Routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person" as that phrase is used in division (F) of section 1347.01 of the Revised Code means personal information relating to ODJFS employees and maintained by the agency for internal administrative and human resource purposes.
 - (15) "System" has the same meaning as it does in division (F) of section 1347.01 of the Revised Code.
 - (16) "Upgrade" means a substantial redesign of an existing computer system for the purpose of providing a substantial amount of new application functionality, or application modifications that would involve substantial administrative or fiscal resources to implement, but would not include maintenance, minor updates and patches, or modifications that entail a limited addition of functionality due to changes in business or legal requirements.
- (B) Procedures for accessing confidential personal information.
- (1) Criteria for accessing confidential personal information.

Personal information systems of the Ohio department of job and family services (ODJFS) are managed on a "need-to-know" basis whereby the information owner determines the level of access required for an employee of the agency to fulfill his or her job duties. The determination of access to confidential personal information shall be approved by the employee's supervisor and the information owner before providing the employee with access to confidential personal information within a personal information system. The agency shall establish procedures for determining a revision to an employee's access to confidential personal information upon a change to that employee's job duties including, but not limited to, transfer or termination. Whenever an employee's job duties no longer require access to confidential personal information in a personal information system, the employee's access to confidential personal information shall be removed.

(2) Individual's request for his or her own confidential personal information.

Upon the signed written request of any individual for confidential personal information that ODJFS maintains about the individual, ODJFS shall do all of the following:

- (a) Verify the identity of the individual by a method that provides safeguards commensurate with the risk associated with any unauthorized access to, or use or release of, confidential personal information.
- (b) Provide to the individual the confidential personal information that does not relate to an investigation about the individual or is otherwise not excluded from being released under Chapter 1347. of the Revised Code, or other federal/state laws or regulations.
- (c) If all information relates to an investigation about that individual, determine what, if any, information can be disclosed to the individual who was or is being investigated, provide the individual with any information which is not protected from disclosure, and inform the individual, to the extent that it is legally required or permitted, of the legal basis for any records that are withheld or redacted.

(3) Notice of invalid access.

- (a) Upon discovery or notification that confidential personal information of a person has been accessed by an employee for an invalid reason, the agency shall notify the person whose information was invalidly accessed as soon as practical, and provide him/her with details of the unauthorized access, to the extent known at the time. However, the agency shall

delay notification for a period of time necessary to ensure that the notification would not delay or impede an investigation or jeopardize homeland or national security. Additionally, the agency may delay the notification consistent with any measures necessary to determine the scope of the invalid access, including which individuals' confidential personal information was invalidly accessed, and to restore the reasonable integrity of the system. "Investigation" as used in this paragraph means the investigation of the circumstances and involvement of an employee surrounding the invalid access of the confidential personal information. Once the agency determines that notification would not delay or impede an investigation, the agency shall disclose the access to confidential personal information made for an invalid reason to the person.

- (b) Notification provided by the agency shall inform the person of the type of confidential personal information accessed and the date or dates of the invalid access, if known.
 - (c) Notification may be made by any method reasonably designed to accurately inform the person of the invalid access, including written, electronic, or telephone notice.
- (4) Appointment of a data privacy point of contact and completion of a privacy impact assessment.
- (a) The ODJFS director shall designate an employee of ODJFS to serve as the data privacy point of contact under the working title of "ODJFS chief privacy officer."
 - (b) The ODJFS chief privacy officer shall work with the state of Ohio chief privacy officer and the state of Ohio chief information security officer within the state of Ohio office of information technology to assist ODJFS with both the implementation of privacy protections for the confidential personal information that ODJFS maintains and compliance with section 1347.15 of the Revised Code and the rules adopted thereunder.
 - (c) The ODJFS chief privacy officer shall ensure the timely completion of the "privacy impact assessment form" developed by the state of Ohio office of information technology.
- (C) Valid reasons for accessing confidential personal information.

Pursuant to the requirements of division (B)(2) of section 1347.15 of the Revised Code, this rule contains a list of valid reasons, directly related to the ODJFS

exercise of its powers or duties, for which only employees of the agency may access confidential personal information regardless of whether the personal information system is manual or electronic.

Except as prohibited by federal/state law, performing the following functions constitute valid reasons for authorized employees of the agency to access confidential personal information:

- (1) Responding to a request from an individual for the list of the confidential personal information the agency maintains on that individual;
- (2) Responding to a request for confidential personal information or records about an individual, submitted by someone other than the individual who is the subject of the information, but only if the applicable confidentiality provisions contain an exception that permits the employee to access and disclose the individual's information/records to a third party;
- (3) Administering a constitutional provision or duty;
- (4) Administering a statutory provision or duty that directly pertains to ODJFS or its programs;
- (5) Administering an administrative rule provision or duty connected to ODJFS or its programs;
- (6) Complying with any state or federal program requirements;
- (7) Processing or payment of claims or otherwise administering a program with individual participants or beneficiaries;
- (8) Auditing purposes;
- (9) Licensure (or permit, eligibility, filing, etc.) processes;
- (10) Investigation or law enforcement purposes, when permitted or required by any applicable programmatic laws or regulations;
- (11) Administrative hearings;
- (12) Litigation, complying with an order of the court, or subpoena, but only after consultation with, and with the permission of, the office of legal and acquisition services;

- (13) Human resource matters (for example, hiring, promotion, demotion, discharge, salary/compensation issues, leave requests/issues, time card approvals/issues);
- (14) Complying with an executive order or policy;
- (15) Complying with an agency policy or a state administrative policy issued by the department of administrative services, the office of budget and management, or other similar state agency;
- (16) Complying with a collective bargaining agreement provision; or
- (17) Research in the furtherance of agency specific programs in so far as allowed by statute.

(D) Confidentiality statutes and administrative rules.

The federal statutes and regulations and state statutes and administrative rules listed in the appendix to this rule make personal information maintained by the agency confidential and identify the confidential personal information that are subject to rules promulgated by this agency in accordance with section 1347.15 of the Revised Code.

(E) Restricting and logging access to confidential personal information systems.

For personal information systems that are computer systems and contain confidential personal information, ODJFS shall do the following:

(1) Access restrictions.

Access to confidential personal information that is kept electronically shall require a password or other sufficient authentication measure as determined by the ODJFS chief privacy officer as part of the "privacy impact assessment process."

(2) Acquisition of a new computer system.

When the agency acquires a new computer system that stores, manages, or contains confidential personal information, ODJFS shall include a mechanism for recording specific access by employees of ODJFS to confidential personal information in the system.

(3) Upgrading existing computer systems.

When ODJFS modifies an existing computer system that stores, manages, or contains confidential personal information, that results in over half of the lines

of code associated with that system being modified, then that system must have an automated mechanism for recording specific access by employees of ODJFS to any confidential personal information that is accessed via that system.

Additionally, each update to a computer system is to be reviewed by the ODJFS chief privacy officer, or designee, to determine if an automated logging mechanism should be implemented with the proposed change. This review is to be conducted during the design phase of the proposed change to the computer system. It is the responsibility of the development team to consult with the ODJFS chief privacy officer at the design phase for this determination.

- (4) Logging requirements regarding confidential personal information in existing ODJFS computer systems.
 - (a) ODJFS shall require employees who access confidential personal information within ODJFS computer systems to maintain a log that records that access.
 - (b) Access to confidential information is not required to be entered into the log under the following circumstances:
 - (i) The ODJFS employee is accessing confidential personal information for official agency purposes including research, and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.
 - (ii) The ODJFS employee is accessing confidential personal information for routine office procedures and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.
 - (iii) The ODJFS employee comes into incidental contact with confidential personal information and the access of the information is not specifically directed toward a specifically named individual or a group of specifically named individuals.
 - (iv) The employee of the agency accesses confidential personal information about an individual based upon a request made under either of the following circumstances:
 - (a) The individual requests confidential personal information about himself or herself; or

(b) The individual makes a request that ODJFS take some action on that individual's behalf and accessing the confidential personal information is required in order to consider or process that request.

(v) ODJFS shall use a consistent electronic means for logging where reasonably possible. If the logging requirements are already being met through existing means, then no additional logging is required in those instances.

(5) Log management.

Each office within ODJFS shall issue a policy that includes who shall keep the log, what information shall be captured on the log, how the log is stored, and how long the log is maintained. Nothing in this rule limits the agency from requiring logging in any circumstance that it deems necessary.

Five Year Review (FYR) Dates: 8/9/2021 and 08/09/2026

CERTIFIED ELECTRONICALLY

Certification

08/09/2021

Date

Promulgated Under:	119.03
Statutory Authority:	1347.15
Rule Amplifies:	1347.15
Prior Effective Dates:	12/31/2010, 01/11/2016

Confidentiality:

**Federal Statutes and Regulations and
State Statutes and Administrative Rules**

A. GENERAL

1. TAX RETURN INFORMATION

26 USC 6103- (1/2/13)

26 USC 7213- (1/2/13)

26 USC 7431- (8/17/06)

42 USC 664- 9/29/14)

OAC rule 5101:9-9-25

2. SOCIAL SECURITY NUMBERS

5 USC 552- (10/28/09)

5 USC 522a(e) (Privacy Act of 1974)

7 USC 2011 to 2029, 2031, 2032, and 2034 to 2036- (as in effect on 1/1/16)

Social Security Act section 1137(a)- (as in effect on 1/1/16)

42 CFR 435.910- (3/23/12)

OAC rules 5101:1-1-03 and 5101:1-3-09

29 USC 3141 (i)(3) (Workforce Innovation and Opportunity Act (WIOA))- (As in effect on 1/1/16)

20 USC 1232g (Family Educational Rights and Privacy Act of 1974 (FERPA))- (11/2/94)

42 USC 405(c)- (4/16/15)

20 CFR 603.7- (9/27/06)

RC 149.45

RC 5101.181

RC 5101.182

RC 1347.12

B. MEDICAL**1. OHIO HEALTH PLANS, including Medicaid, Disability Medical Assistance, CHIP I and II, and Refugee Medical Assistance****Federal Statutes and Regulations:**

42 USC 1320d- (As in effect on 1/1/16)
42 USC 1396a(a)(5)- (4/1/14)
42 USC 1396r-8(b)(3)(D)- (4/1/14)
Social Security Act (SSA) section 1902(a)(7)- (As in effect on 1/1/16)
42 CFR 2.1- (As in effect on 1/1/16)
42 CFR 431.10- (7/15/13)
42 CFR 431.300- (3/23/12)
42 CFR 431.302- (As in effect on 1/1/16)
42 CFR 431.305- (3/23/12)
42 CFR 431.306- (3/23/12)
42 CFR 435.904- (9/23/94)
42 CFR 435.945- 3/23/12)
42 CFR 483.315(i)- (8/11/09)
45 CFR 95.621- (10/28/10)
45 CFR 160 subparts A, B, and C- (As in effect on 1/1/16)
45 CFR part 164, subparts A, C, and E (HIPAA)- (As in effect on 1/1/16)

State Statutes and Administrative Rules:

RC 109.85
RC 173.20
RC 173.22
RC 339.81
RC 2305.24 and 2305.251
RC 3701.741
RC 3701.243
RC 3701.028

RC 3701.75

RC 4123.27

5160.01

5160.45

5164.756

5160.39

5162.03

5163.40

5164.342

5164.341

5165.88

RC 5302.221

OAC rule 5160:1-1-51.1

OAC rule 5160-14-09

OAC rule 5160-1-08(L)

OAC rule 5160-26-08(D)(4)

OAC rules 5160-45-07(D)(9) and 5160-45-08(D)(5)

OAC rule 5101:6-50-07

OAC rule 5101:9-22-15

C. TEMPORARY ASSISTANCE to NEEDY FAMILIES (TANF)/CASH ASSISTANCE

(Ohio Works First, Refugee Cash Assistance, Disability Financial Assistance, and Prevention, Retention, and Contingency)

Federal Statutes and Regulations:

42 USC 602(a)(1)(A)(iv)- (2/22/12)

42 USC 608(a)(9)(B)- (2/22/12)

45 CFR 205.50- (11/13/96)

State Statutes and Administrative Rules:

RC 307.983

RC 307.987

RC 4123.27

RC 5101.181

RC 5101.182

RC 5101.26

RC 5101.27

5101.272

RC 5101.28

RC 5101.30

RC 5101.80

OAC rule 5101:1-1-03

OAC rule 5101:1-1-36(G)

OAC rule 5101:1-3-10

OAC rule 5101:9-22-15

D. FOOD ASSISTANCE

Federal Statutes and Regulations:

7 USC 2020(e)(8)- (2/7/14)

7 CFR 272.1(c)- (As in effect on 1/1/16)

7 CFR 273.2- (As in effect on 1/1/16)

State Statutes and Administrative Rules:

RC 2913.46

RC 5101.26

RC 5101.27

5101.272

OAC rule 5101:4-1-13(A)(7)

OAC rule 5101:4-2-09(I)(2)

OAC rule 5101:4-3-08

OAC rule 5101:4-3-22(G)

OAC rule 5101:4-7-09

OAC rule 5101:4-8-30(R)

OAC rule 5101:9-22-15

E. CHILD WELFARE AND CHILD DAY CARE

Federal Statutes and Regulations:

42 USC 671(a)(8)- (9/29/14)

42 USC 5106a(b)(2)(A)(viii)- (12/20/10)

42 USC 5106a(b)(2)(A)(x)- (12/20/10)

42 USC 5106a(c)(4)(B)(i)- (12/20/10)

42 USC 5106a(c)(5)(A)- (12/20/10)

42 USC 5106a(c)(6)- (12/20/10)

45 CFR 1355.21- (1/6/12)

45 CFR 1355.30(p)(3)- (1/6/12)

45 CFR 205.50- (11/13/96)

State Statutes and Administrative Rules:

RC 109.57(H)

RC 109.5721

RC 121.37(A)(2)(c)

RC 149.43(A)(1)(d)

RC 149.43 (A)(1)(e)

RC 149.43(A)(1)(f)

RC 307.627

RC 307.628

RC 1347.08(E)(2) and (F)(2)

RC 2151.141

RC 2151.142

RC 2151.421

RC 2151.423

RC 2151.86

RC 3107.063 and 3107.17

RC 3109.051(H)

RC 3705.09(G)

RC 3705.12

RC 3705.23

RC 5101.13 to 5101.134

RC 5101.27

RC 5101.29

RC 5101.80(E)

RC 5104.013(A) and (F)

RC 5104.038

RC 5153.111(A) and (D)

RC 5153.17

RC 5153.171

RC 5153.172

RC 5153.173

OAC rule 5101:2-7-04

OAC rule 5101:2-12-08(C) and (G)

OAC rule 5101:2-13-08(C) and (G)

OAC rule 5101:2-13-26

OAC rule 5101:2-13-37(C)

OAC rule 5101:2-14-03

OAC rule 5101:2-20-04

OAC rule 5101:2-33-21

OAC rule 5101:2-33-28

OAC rule 5101:2-36-03

OAC rule 5101:2-36-04

OAC rule 5101:2-42-90

OAC rule 5101:2-48-19

OAC rule 5101:2-48-20

OAC rule 5101:2-48-21

OAC rule 5101:2-48-22

OAC rule 5101:2-48-23

OAC rule 5101:6-50-07

OAC rule 5101:9-22-15

F. CHILD SUPPORT

Federal Statutes and Regulations:

42 USC 653- (9/29/14)

42 USC 654(26)- (9/24/14)

42 USC 654 a(d)- (9/29/14)

45 CFR 235.70- (3/4/91)

45 CFR 303.15- (5/12/03)

45 CFR 303.21- (As in effect on 1/1/16)

45 CFR 303.30- (2/9/99)

45 CFR 303.69- (As in effect on 1/1/16)

45 CFR 303.70- (12/29/10)

45 CFR 307.13- (12/29/10)

State Statutes and Administrative Rules:

RC 149.43 (A)(1)(e)

RC 149.43(A)(1)(o)

RC 3107.063

RC 3121.76

RC 3121.84

RC 3121.898

RC 3121.899

RC 3123.89

RC 3123.92

RC 3123.93

RC 3123.95

RC 3123.954

RC 3125.08

RC 3125.16

RC 3125.49

RC 3125.50

OAC rule 5101:1-1-03

OAC rule 5101:9-22-15

OAC rule 5101:12-1-20

OAC rule 5101:12-1-20.1

OAC rule 5101:12-1-20.2

OAC rule 5101:12-10-90(C)

OAC rule 12-20-10

OAC rules 5101:12-50-65 and 5101:12-50-65.1

OAC rule 5101:12-55-10

G. ADULT SERVICES

State Statutes and Administrative Rules:

RC 5101.61(F)

OAC rule 5101:2-20-04

H. REFUGEE ASSISTANCE

State Administrative Rules:

OAC rule 5101:1-1-03

I. TITLE XX

State Statutes:

RC 5101.46(D)

J. UNEMPLOYMENT COMPENSATION BENEFITS, TAX, AND WAGE RECORDS

Federal Statutes and Regulations:

29 USC 49b (b)- (7/22/14)

42 USC 503(a)(1) and (8)- (12/26/13)

42 USC 1320b - 7(a)(5) and (a)(6)- (11/5/90)

20 CFR 603.2- (As in effect on 1/1/16)

20 CFR 603.3- (As in effect on 1/1/16)

20 CFR 603.5- (As in effect on 1/1/16)

20 CFR 603.7- (As in effect on 1/1/16)

20 CFR 609.13- (6/21/06)

20 CFR 614.14- (As in effect on 1/1/16)

20 CFR 617.57- (As in effect on 1/1/16)

State Statutes and Administrative Rules:

RC 4141.162

RC 4141.21

RC 4141.22

RC 4141.43

OAC rule 4141-43-01

OAC rule 4141-43-02

OAC rule 4141-43-03

K. WORKFORCE DEVELOPMENT

1. THE WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)

29 USC 3141(i)(3) - (As in effect on 1/1/16)

29 USC 3245(a)(4)- (As in effect on 1/1/16)

29 USC 3341- (As in effect on 1/1/16)

20 CFR 603.7- (As in effect on 1/1/16)

29 CFR 37.37- (As in effect on 1/1/16)

34 CFR 99.30(a)- (4/21/04)

RC 307.983

OAC rule 4141-43-01

OAC rule 4141-43-02

Workforce Innovation and Opportunity Act (WIOA) section 116(i)- (As in effect on 1/1/16)

2. LABOR MARKET INFORMATION

Information maintained or furnished to the director of ODJFS under RC Chapter 4141. as Labor Market Information (LMI) is governed by the same laws and regulations that govern the underlying confidential information. The Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2002, Privacy Act, and Trade Secrets Act all apply to LMI.

3. EMPLOYMENT SERVICES

(INCLUDING WAGNER - PEYSER)

Federal Regulations:

20 CFR 658.413- (1/5/82)

State Statutes and Administrative Rules:

RC 4141.21

RC 4141.43

OAC rule 4141-43-01

L. STATE HEARINGS

Federal Regulations:

7 CFR 273.15- (11/21/00)

45 CFR 205.10(a)(19)- (7/9/92)

State Administrative Rules:

OAC rule 5101:6-5-01(E) and (F)

OAC rule 5101:6-7-01(G)

OAC rule 5101:6-8-01(K)

OAC rule 5101:6-20-16(H)

OAC rule 5101:6-50-07

OAC rule 5101:9-22-15

M. MISCELLANEOUS

Federal Regulations:

29 CFR 825.500(g)- (As in effect on 1/1/16)

29 CFR 1630.14(c) and (d)- (As in effect on 1/1/16)

State Statutes and Administrative Rules:

RC 9.01

RC 9.312

RC 102.03(B)

RC 124.88

RC 131.02 and 131.022

RC 145.27

RC 149.431

RC 149.433

RC 1306.23

RC 1333.61

RC 1347.12

RC 3701.74

RC 4701.19

OAC rule 5101:9-9-38

**PENALTIES FOR
WRONGFUL WITHHOLDING OR DISCLOSURE**

Federal Statutes:

5 USC 552a(g) – (10/28/09)

5 USC 552(a)(4)(B)- (10/28/09)

42 USC 1320d-5- (11/5/90)

42 USC 1320d-6- (11/5/90)

42 USC 5106a(c)(4)(B)(ii)- (12/20/10)

State Statutes and Administrative Rules:

RC 149.43(C)

RC 173.99

RC 307.629(C)

RC 1347.10

RC 1347.15(G) and (H)

RC 1347.99

RC 1349.192

RC 2151.99

RC 2921.14

RC 3107.99

RC 3121.99

RC 3125.99

RC 3701.244

RC 4141.22

RC 4141.99

RC 5101.181 and 5101.182

RC 5101.28(D)

RC 5101.99

RC 5160.99

OAC rule 4141-43-01