

## Operational Policy

<b>Policy Title:</b>	<b>Accessing Individual Records</b>		
<b>Policy Number:</b>	OHA-100-003		
<b>Original Date:</b>	07/22/2014	<b>Last Update:</b>	10/03/2016
<b>Approved:</b>	Mark Fairbanks, OHA CFO		

### Purpose

This policy is one of a series that outlines Oregon Health Authority (OHA) guidelines and expectations for the necessary creation, receipt, maintenance, use, transmission or disclosure of protected information about individuals in order to provide services and benefits while maintaining reasonable safeguards to protect the privacy of information.

### Description

This policy describes how individuals may access the designated record set maintained by OHA. All OHA staff should review the agency privacy policies to be sure they understand how these policies work together to protect individual privacy.

### Applicability

This policy applies to all OHA staff including employees, volunteers, interns and agency contractors.

As keepers of the public trust, all agency employees have a responsibility to comply with state and agency policies, administrative rule, and state and federal law. The agency takes this responsibility seriously and failure to fulfill this responsibility is not treated lightly. Employees who fail to comply with state or agency policy, administrative rule, or state and federal law may face progressive discipline, up to and including dismissal from state service.

### Policy

1. OHA's designated record set consists of specific information about an individual maintained in agency files or records. The information in a designated record set is used in whole or in part by OHA to make decisions about the individual, consistent with federal and state statute and rule and OHA policy.
2. With limited exceptions, individuals have the right to access, inspect and obtain a copy of their own records, including protected health information (PHI) maintained in the agency's designated record set.

- a. Each covered entity program within the agency shall define the program's designated record set. This process shall include:
    - A. The DHS|OHA Privacy Compliance Officer.
    - B. The public records officer.
    - C. DOJ review.
  - b. A schedule of the defined program designated record set shall be maintained as an addendum to this policy.
  - c. Programs shall have one year from the implementation of the 2016 update of this policy to assess and define their program designated record set.
  - d. The definition of a designated record set shall be reviewed by covered entity programs at least every three years.
3. OHA will not use, disclose, or re-disclose information about an individual without a written authorization from the individual or their representative, unless otherwise required or permitted by law.
  4. OHA staff shall verify an individual's identity and the authorization to disclose before releasing personal information, including PHI.
  5. Prior to any use or disclosure of individual information, OHA staff shall review the individual file and confirm that the particular use or disclosure has not been granted a restriction. Some individuals have the right to access, inspect, and obtain a copy of another individual's records maintained in a designated record set.
  6. If OHA maintains information about an individual in a record that includes information about other people, the individual is only authorized to see information about him or herself, except as provided in this policy:
    - a. If an individual identified in the file is a minor child of the individual, and the individual is authorized under Oregon law to have access to the minor's information or to act on behalf of the minor in making decisions about care.
    - b. If the individual requesting information is recognized under Oregon law as a guardian, legal custodian, or a personal representative of the individual, and is authorized by Oregon law to have access to the individual's information or to act on behalf of the individual in making decisions about services or care.
  7. A person may obtain access to an individual's designated record set without the individual's authorization in some circumstances.
    - a. If under applicable law an executor, administrator, or other person has documented authority to act on behalf of a deceased individual or of the individual's estate, a covered entity shall treat such person as a personal representative with respect to PHI relevant to the personal representation.
    - b. If the person requesting information is a representative of Court Appointed Special Advocate (CASA), OHA shall permit the requestor to inspect and copy any records relating to a child or ward involved in their case, without the consent of the child, ward or parents.
    - c. If the person requesting information is protecting and advocating for the rights of individuals with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act or the rights of individuals with mental illness under the Protection and Advocacy for Individuals with Mental Illness Act, the requestor shall have access to all appropriate records as defined in ORS 192.
  8. An individual may request access to the record in their own designated records set or the record set of their minor child by completing an MSC 2093 or by submitting a request in a manner acceptable to OHA.

9. A person may request access to the records in a designated record set other than their own or their minor child by having the individual whose records are being requested complete form MSC 2099 or by submitting a request in a manner acceptable to OHA.
10. OHA shall respond to a request for access to information no later than 30 calendar days after receiving a request.
  - a. OHA shall disclose written accounts requested under ORS 179.505 within five (5) business days.
  - b. OHA shall release information within the agency's records unless an exception exists or an extension is granted.
  - c. OHA shall deny requests for access to information not held by the agency.
11. When OHA is unable to act within the 30 calendar day limit, OHA may extend the response time up to 30 additional calendar days, if the request does not involve the release of PHI.
12. When extending the response time OHA shall notify the individual in writing:
  - a. Of the reason for the delay; and
  - b. The date by which OHA will act on the request.
13. If OHA grants or denies an individual's request for access to information, in whole or in part, OHA shall inform the individual of the access decision.
14. If OHA grants access to requested information, in whole or in part, OHA shall provide the requested information in the form or format and in the manner requested by the individual, if the information is readily available in that form or format.
  - a. If not readily available as requested, OHA shall provide the information in a readable hard-copy format, electronic format or such other format as agreed to by OHA and the individual.
  - b. OHA may provide the individual with a summary of the requested information instead of providing access.
  - c. OHA may provide an explanation of the information if the individual agrees.
  - d. OHA shall grant access to the requested information at a time and place convenient for the individual and OHA.
  - e. An individual may request that information be mailed, faxed or emailed.
15. If OHA denies access to requested information, in whole or in part, in a record or file containing PHI, OHA shall, within 30 days:
  - a. Offer the individual access to any information to which access is not being denied; and
  - b. Provide the individual with a denial written in plain language.
  - c. The written denial shall include:
    - A. The basis for the denial.
    - B. An explanation of the individual's review rights, including information about how the individual may exercise these rights if the reason for the denial is due to danger to the individual or another person.
    - C. Information about how the individual may file a complaint with OHA.
    - D. If the information is PHI, how the individual may file a complaint with the United States Department of Health and Human Services, Office for Civil Rights.
    - E. The electronic link to the privacy policy and notice of privacy practice available for the individual's information and reference.
16. Any person, who requests a copy of information, an explanation, or a written summary of information, is responsible for paying a reasonable, cost-based fee, unless the fee is waived pursuant to OHA policy.
  - a. OHA is allowed to charge fees in accordance with federal and state statute and rule and OHA policy.
  - b. OHA charges fees for all records based on the scale established in the agency's public records policy.
  - c. Charges related to PHI should be reviewed by the Information Security and Privacy Office.

- d. If a fee is to be charged, individuals must be given an estimate of fees and agree to pay the fees prior to information being produced.
17. If OHA policy conflicts with federal or state statute or rule, that statute or rule supersedes unless the OHA policy provides more protection.
18. DHS and OHA follow all federal and state statutes and rules and all Oregon Department of Administrative Services statewide policies.

## References

[ORS 192](#)  
[ORS 179](#)  
[ORS 419A](#)  
[45 CFR Part 164](#)  
[42 U.S.C. Chapter 114](#)  
[42 U.S.C. Chapter 144](#)  
[Privacy/Security Glossary of Common Terms](#)

## Forms

[MSC 2093 Request for Access to Records](#)  
[MSC 2099 Authorization for Use and Disclosure of Information](#)  
[MSC 2090 Notice of Privacy Practices](#)

## Contacts

Information Security and Privacy Office (ISPO)  
Phone: 503-945-6812 (Security)  
503-945-5780 (Privacy)  
Fax: 503-947-5396  
Email: [dhsinfo.security@state.or.us](mailto:dhsinfo.security@state.or.us)  
[dhs.privacyhelp@state.or.us](mailto:dhs.privacyhelp@state.or.us)

U. S. Department of Health and Human Services, Office for Civil Rights  
Medical Privacy, Complaint Division  
200 Independence Avenue, SW  
Washington, D.C. 20201  
Toll free Phone: 877-696-6775  
Phone: 866-627-7748  
TTY: 886-788-4989  
Email: [OCRComplaint@hhs.gov](mailto:OCRComplaint@hhs.gov)

## Policy History

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## Keywords

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