

APA-1
4/18

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control 420 Alabama Department of Public Health

Rule Number 420-1-5-.04

Rule Title Open Records

New XXXX Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety or welfare? No

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? The impact of the increased cost of services to members of the public is minimal, as detailed in the accompanying APA6. Yes

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facts of the rulemaking process designed solely for the purpose of and so they have as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

Does the proposed rule have an economic impact? Yes

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of §41-22-23, Code of Alabama, 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama, 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of Certifying Officer  Date 3/14/23

FORM APA2
10/17

STATE BOARD OF HEALTH
NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Public Health

RULE NUMBER AND TITLE: 420-1-5-.04. Open Records

INTENDED ACTION: To amend the current rules

SUBSTANCE OF PROPOSED ACTION: This amendment is required to comply with Executive Order No. 734, issued by Governor Ivey. The amendment will improve response times for public records requests, ensure reasonable fees are being charged and enhance accessibility for public record requests.

TIME, PLACE, AND MANNER OF PRESENTING VIEWS: A public hearing will be held on April 18, 2023 at 10:30 a.m., at the RSA Tower, Suite 1540, 201 Monroe Street, Montgomery, AL 36104.

FINAL DATE FOR COMMENTS AND COMPLETION OF NOTICE: Written or oral comments will be received until the close of the record at 5:00 p.m. on Friday, May 5, 2023. All comments and requests for copies of the proposed amendments should be addressed to the contact person listed below.

CONTACT PERSON AT AGENCY: Pam Kendrick, Office of General Counsel, Department of Public Health, P.O. Box 244018, Montgomery, Alabama 36124-4018, Telephone number: (334) 260-5209.



P. Brian Hale, Agency Secretary

**ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))**

Control No. 420 Department or Agency Public Health

Rule No: 420-1-5-.04

Rule Title: Open Records

 New x Amend Repeal Adopt by Reference

 This rule has no economic impact.

 x This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:

The proposed changes are required to comply with Executive Order No. 734, issued by Governor Kay Ivey on January 26, 2023. The Executive Order requires each Agency to improve response times for public record requests, ensure that reasonable fees are being charged for such records, and enhance accessibility for public record requests.

2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:

This rule is necessary to establish procedures and charges for public record requests.

3. EFFECT OF THIS RULE ON COMPETITION:

N/A

4. EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

This rule change will not increase the cost of living in any geographical area of the state, but it may result in a small increase in out of pocket costs for some members of the general public requesting copies of public records.

A standard, minimum fee of \$20 is imposed under the Governor's Executive Order for all public record requests. There is a reduction in the amount of the per page charge previously imposed by the Department for records obtained and provided electronically; however, the Executive Order permits state agencies to charge \$20.00 per hour for time spent locating, retrieving, and preparing records for production in response to all public record requests. This could result in an increase in overall cost to the public.

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

There will be no impact on employment.

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

N/A

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

In the short term, the increase in fees is not expected to impact requesters, given the low cost.

The general public will benefit from this rule change because it improves response times for public record requests, ensures that reasonable fees are being charged for such records, and enhances accessibility for public record requests.

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:

There are no uncertainties associated with the benefits and burdens of the proposed rule changes.

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

This rule change should have no impact on the environment or the public health.

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:

If this rule change is not implemented, there will be no detrimental effect on the environment or the public health, but the Department will not be in compliance with the Governor's Executive Order.

****Additional pages may be used if needed.**

420-1-5-.04. Open Records.

(1) All public records of the State Board of Health are available for public inspection during business hours. Requests for such records may be made by Alabama citizens either electronically, by mail, or in person, pursuant to the provisions of the Alabama Open Records Act, Ala. Code § 36-12-40.

(a) Copies of meeting minutes, department forms, bureau records, and county health department records maintained in hard copy may be obtained at a cost of \$20 per hour, including a standard, minimum fee of \$20, for time spent locating, retrieving, and preparing records for production. Unless otherwise provided by law or rule, requestors will also be charged a per-page fee of \$.50 for copies produced on standard 8.5 x 11 paper a \$5 retrieval fee plus \$1 per page for the first 25 pages and \$.50 for every page thereafter unless otherwise provided by law or rule. This charge may be waived in the case of requests by governmental agencies or indigent persons.

(b) Copies of records maintained electronically, including messages and attachments exchanged via electronic mail, or for record searches related to extraordinary events, such as public health emergencies of any kind, may be obtained at a cost of \$20 per hour, including a standard, minimum fee of \$20, for time spent locating, retrieving, and preparing records for production, unless otherwise provided by law or rule. There is no per-page charge for records obtained and provided electronically. a \$25 retrieval fee plus \$.10 per page, unless otherwise provided by law or rule. This charge may be waived in the case of requests by governmental agencies or indigent persons. Copies of records pertaining to extraordinary events may be provided to members of the press who are not citizens of the state, subject to the requested charge.

(c) The department will send a written acknowledgment of receipt of a request for public records within 2 business days. Responses to standard requests that seek one or more specifically and discretely identified public records that the department determines would take less than 8 hours of staff time to process and require no or minimal clarification from the requestor will be provided within 15 business days of the acknowledgement of receipt. If additional time is required, the department may extend this period in 15-business day increments upon written notice to the requestor.

(d) Requestors will be notified within 15 business days of the acknowledgment of receipt if the department determines that a request is time-intensive, requiring more than 8 hours of staff time to process, including vague or overly broad requests and any time needed to redact or take other measures to withhold legally protected information. At that time, the department will provide notice of any likely fees and allow the requestor to withdraw the time-intensive request and submit a new request that is not time-intensive. If the requestor elects to proceed with the time-intensive request, the department will provide a substantive response fulfilling or denying the request within 45 business days after the election to proceed. If additional time is required, the department may extend this period in 45-business day increments upon written notice to the requestor.

(2) Medical or clinic records, notifiable disease records, records of epidemiological investigations, investigative records of the Bureau of Health Provider Standards or records that are proprietary by statute, case law, rule, or custom are not “public records” per se and are not open to the public’s inspection. Release of records by subpoena in civil or criminal actions are governed by individual

statutes or court rules.

(3) Charge for response to subpoenas--In accordance with Rule 45(a)(3)(c) Alabama Rules of Civil Procedure, a reasonable charge may be requested for response to subpoenas. Such records shall be obtained at a cost of a \$5 retrieval fee plus \$1 per page for the first 25 pages and \$.50 for every page thereafter unless otherwise provided by law or rule.

(4) Nothing in the rule is intended to require that information defined by 45 CFR, Parts 160 and 164 as “protected health information” or that information otherwise protected as confidential by rule or statute, be made available to the public. All questions as to whether a particular document or class of information is public or confidential should be referred to the Office of General Counsel.

Author: P. Brian Hale

STATUTORY AUTHORITY: Code of Ala. 1975, §§ 13A-14-2, 22-2-2(6), 41-22-4.

HISTORY: Filed July 20, 1990. **Amended:** Filed January 15, 2003; effective February 19, 2003.

Amended: Filed April 21, 2004; effective May 26, 2004. **Amended:** Filed December 17, 2009; effective January 21, 2009. **Amended:** Filed June 17, 2021; effective August 14, 2021. **Amended:** **XX-XX-XXXX; effective XX-XX-XXXX.**