

SECTION 4. RECORDS

(As amended December 10, 2002, October 21, 2008, and June 30, 2015)

4-1. Establishment of personnel records.

- (a) The CAO must establish and maintain personnel records that are required by law, necessary for administration of the merit system, or both.
- (b) Personnel records may include applicant files, examination records, classification files, employee files and related materials, and medical records. Investigatory files are not personnel records.
- (c) The County may retain and store records in various formats, including as electronically imaged documents.

4-2. Ownership of personnel records. All personnel records of County government employees and all other records and materials relating to administration of the County's merit system are the property of the County. The CAO's decision on the use, maintenance, and disposition of personnel records is final, subject to relevant State and Federal laws and regulations.

4-3. Employee records.

- (a) ***Official personnel file.*** The Office of Human Resources (OHR) must keep the County's official personnel file for each employee. The official personnel file must not contain any information about an employee's medical or psychological condition. OHR must limit the documents in the official personnel file to:
 - (1) application that resulted in appointment, reappointment, promotion, transfer, or demotion;
 - (2) employment history, including personnel action documents affecting appointment, reappointment, promotion, transfer, demotion, salary change, or other personnel action;
 - (3) employee identifying information and emergency contact information;
 - (4) payroll withholding documents;
 - (5) insurance, retirement, and other records related to employee benefits;
 - (6) documents submitted by the employee with the employee's application for employment or promotion to show that the employee has a degree, license, or certificate required for the current job or desired job, but not routine training records, such as verification of a class or conference attended;

- (7) performance evaluations from the last 5 years;
 - (8) disciplinary actions other than written reprimands;
 - (9) commendations; and
 - (10) written reprimands from the last 12 months.
- (b) ***Department operating record.***
- (1) A department director may maintain employee records necessary for program level operations.
 - (2) A department director may maintain a department operating record in an electronic format.
 - (3) An operating record must not contain any medical or psychological records of an employee.
 - (4) A department director must limit the documents in the operating record to:
 - (A) home address and phone number;
 - (B) current job information, which may include the job description and location;
 - (C) employee emergency contact information;
 - (D) training records;
 - (E) timesheet and leave data necessary to verify payroll;
 - (F) leave records from the last 5 years;
 - (G) performance evaluations and supporting documentation from the last 5 years;
 - (H) commendations from the last 5 years;
 - (I) disciplinary actions and written reprimands from the last 5 years;
 - (J) notices received from the Employee Medical Examiner during the last 5 years concerning the employee's duty status, work restrictions, and recommended accommodations; and

- (K) notes from health care providers submitted by employees during the last 2 years to confirm medical appointments, excuses from work, duty status, returns to work, and work restrictions.
 - (5) A department director must maintain records of an employee's training, including selection for training or apprenticeship, for the entire period of an employee's employment and must keep the records for 6 months after the employee leaves County employment. If an employee transfers to another department, the department director must give the employee's training records to the new department.
 - (6) If an employee transfers to another department, the department director must send a copy of the operating record to the employee's new department.
- (c) ***Supervisory file.***
- (1) A supervisor may maintain a file for each employee supervised that contains documents related to the previous 2 years only.
 - (2) The supervisor may include in the supervisory file:
 - (A) copies of records contained in the department operating record;
 - (B) commendations and complaints from customers concerning the employee's job performance or conduct;
 - (C) notes made by the supervisor during a performance review or other counseling sessions with the employee;
 - (D) copies of the employee's completed work assignments, draft documents, or work in progress; and
 - (E) written communications between the employee and the supervisor concerning performance or conduct issues.
 - (3) A supervisor may maintain a supervisory file in an electronic format.
- (d) ***Medical record.***
- (1) The Manager of Occupational Medical Services is the custodian of employee medical records and must maintain the medical record of each employee.
 - (2) The Manager of Occupational Medical Services must limit the medical record of an employee to:

- (A) County medical examination records;
 - (B) records obtained or received from a health care provider about the fitness of an employee or applicant or a request for disability retirement;
 - (C) a medical waiver or release signed by the employee;
 - (D) a request by the employee's supervisor or department director for an additional or special medical examination and the record of an action taken in response to the request;
 - (E) result of a medical test, examination, or procedure including psychological examination or report; and
 - (F) information provided by the employee or other person that relates to the health or health care of the employee.
- (3) An employee's psychological or genetic records:
- (A) are subject to special restrictions on disclosure; and
 - (B) must be maintained in the employee's medical record.
- (4) Medical records are confidential. The Manager of Occupational Medical Services must maintain medical records in a secure location apart from other employee records.

4-4. Supervisor's addition of documents to employee record.

- (a) ***Addition of documents to official personnel file and department operating record.*** A supervisor must provide to an employee a copy of any document that the supervisor places in the official personnel file or department operating record and allow the employee to submit a rebuttal to any adverse document. The supervisor must have the employee's rebuttal placed in the file.
- (b) ***Addition of documents to supervisory file.***
- (1) A supervisor may place a document in the supervisory file without providing a copy to the employee.
 - (2) A supervisor must permit an employee to:
 - (A) review the supervisory file upon request as provided under these Regulations; and

- (B) provide a rebuttal to any document in the supervisory file and have it placed in the file.

4-5. Maintenance of employee records. A County official designated as a custodian of an employee record should review the record periodically to assure compliance with these Regulations. A custodian who removes a document from a record under this section must destroy the document.

4-6. Access to employee records.

- (a) ***Official personnel file, department operating record, and supervisory file.*** A non-medical employee record is confidential and is available on a need-to-know basis to:
 - (1) the employee's department director, a person who supervises the work of the individual, or another person who is authorized by the Maryland Public Information Act to inspect the record;
 - (2) the CAO or designee;
 - (3) the OHR Director and staff;
 - (4) the County Attorney and staff; and
 - (5) members and staff of the Merit System Protection Board (MSPB).
 - (6) A department head or designee who is considering offering the employee a position.
- (b) ***Medical record.***
 - (1) An applicant's or employee's medical record is confidential.
 - (2) Access to all genetic information, as defined in Section 27-18 of the County Code, is restricted to the Employee Medical Examiner and supporting medical staff.
 - (3) If an evaluation of an individual's medical or physical condition is reasonably necessary to determine if reasonable accommodation is available for the individual or if the individual is employable, eligible for continued employment, or eligible for a benefit for which the employee has applied, the Manager of Occupational Medical Services or designee may provide or make available an employee's relevant non-psychological medical records (with the exception of genetic information) to the following persons only, and only if the persons are participating in one of the above-referenced decision making processes:

- (A) the CAO or designee;
 - (B) the OHR Director and designated staff;
 - (C) the County Attorney and designated staff;
 - (D) members and designated staff of the MSPB;
 - (E) the Disability Review Panel;
 - (F) the Disability Arbitration Board or Police Disability Arbitration Board; and
 - (G) Workers' Compensation administrators.
- (4) If an applicant or employee has filed a grievance, filed an appeal to the MSPB, applied for a disability retirement, filed a claim for Workers' Compensation benefits, or otherwise filed a claim or complaint against the County in which the employee has made an issue of the employee's physical or medical condition, the Manager of Occupational Medical Services or designee may provide or make available an employee's relevant non-psychological medical records (with the exception of genetic information) to the following persons only, and only if the persons are participating in the litigation or consideration of the claim or complaint:
- (A) the CAO or designee;
 - (B) the OHR Director and designated staff;
 - (C) the County Attorney and designated staff;
 - (D) members and designated staff of the MSPB;
 - (E) the Disability Review Panel;
 - (F) the Disability Arbitration Board or Police Disability Arbitration Board; and
 - (G) County Workers' Compensation administrators, when relevant to a Workers' Compensation claim.
- (5) The Employee Medical Examiner or designee may disclose relevant, limited medical information to department first-aid and safety personnel if an immediate disclosure is necessary to provide for the emergency health care of an employee.

- (6) An employee's or applicant's psychological records are confidential. If an evaluation of an individual's mental health is reasonably necessary to determine if reasonable accommodation is available for the individual or if the individual is employable or eligible for continued employment, the Manager of Occupational Medical Services or designee may provide or make available an employee's psychological records (with the exception of genetic information) to the following persons only, and only if the persons are participating in one of the above-referenced decision making processes:
- (A) the CAO or a selected designee;
 - (B) the OHR Director and select designated staff; and
 - (C) the County Attorney and select designated staff.
- (7) If an employee has filed a grievance, filed an appeal to the MSPB, applied for a disability retirement, filed a claim for Workers' Compensation benefits, or otherwise filed a claim or complaint against the County in which the employee has made an issue of the employee's mental health, the Manager of Occupational Medical Services or designee may provide or make available an employee's relevant psychological records (with the exception of records of genetic information) to the following persons only, and only if the persons are participating in the litigation or consideration of the claim or complaint:
- (A) the CAO or a selected designee;
 - (B) the OHR Director and select designated staff;
 - (C) the County Attorney and select designated staff;
 - (D) members and designated staff of the MSPB;
 - (E) members and designated staff of the Disability Review Panel;
 - (F) members and designated staff of the Disability Arbitration Board or Police Disability Arbitration Board; and
 - (G) County Workers' Compensation administrators, when relevant to a Workers' Compensation claim.

4-7. Release and review of employee records.

- (a) ***Release of official personnel file.*** Except for verification of employment and current salary and unless otherwise permitted by law, an employee must provide a

signed authorization for the release of information concerning the employee to anyone not listed in Section 4-6 above.

(b) ***Employee review of records.***

- (1) At the request of an employee or designee of the employee, the custodian of the records must allow the employee or designee to review the employee's official personnel file, department operating record, supervisory file, or medical records at a time and place mutually convenient to the custodian and the employee or designee. An employee or designee may submit a request in writing, by telephone or email, or in person.
- (2) The custodian of the employee record must:
 - (A) verify the identity of the employee or designee before allowing the employee or designee to review the record; and
 - (B) document for the employee record that the employee or designee reviewed the record on the indicated date.
- (3) The custodian of the employee record may require the employee or designee to pay a fee for copies of more than 10 pages of employee records.

(c) ***Release and review of psychological records.***

- (1) At the request of an employee or designee of the employee, the Employee Medical Examiner must allow the employee or designee to review the employee's psychological records at a time and place mutually convenient to the custodian and the employee or designee, unless the Employee Medical Examiner believes disclosure of any part of the employee's psychological records to be injurious to the health of the employee.
- (2) If the Employee Medical Examiner believes disclosure of any part of the employee's psychological records to be injurious to the health of the employee, the Employee Medical Examiner may refuse to disclose that portion of the records to the employee. At the written request of the employee, the Employee Medical Examiner must:
 - (A) make available to the employee or designee a summary of the undisclosed portion of the psychological records and place a copy of the summary in the employee's medical records; and
 - (B) permit a health care provider to examine and copy the psychological records if the health care provider is authorized to

treat the employee for the condition that is the subject of the sensitive records.

- (3) If an employee has been the subject of a psychological test, the Employee Medical Examiner must disclose the portion of the employee's psychological records relating to the psychological test to a licensed psychologist or psychiatrist designated by the employee, if the employee requests the disclosure in writing.
- (4) If a mental health evaluation of an individual is performed to determine if the individual is employable or eligible for continued employment and if the evaluation is performed for one of the reasons described in subsection (5) below, the Employee Medical Examiner must provide a copy of the medical record developed from the mental health evaluation to:
 - (A) the individual;
 - (B) a person authorized to consent to health care for the individual; or
 - (C) an attorney appointed in writing by the individual.
- (5) The Employee Medical Examiner must provide a copy of the medical record developed from the mental health evaluation to an individual identified in subsection (4) above only if the evaluation is performed:
 - (A) at the written request of the County;
 - (B) at the request of the County in connection with a civil action initiated by, or on behalf of, the individual; or
 - (C) at the request of the County in connection with a U. S. Equal Employment Opportunity Commission complaint initiated by, or on behalf of, the individual

4-8. Supervisory notes. A supervisor may maintain informal notes regarding performance or other information about an employee under the supervision of that supervisor. Supervisory notes are not considered official employee records and are not subject to review by the employee or others.

Editor’s note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

| Bargaining unit | Articles of current agreements with references to records |
|------------------------|--|
| Firefighter/Rescuer | 10, Disability Leave 26, Personnel Files/Records 38, Contract Grievance Procedure |
| OPT/SLT | 26, Termination 28, Disciplinary Actions 32, Tools and Uniforms 34, Safety and Health 41, Retirement 46, Records Appendix IX, Performance Planning and Evaluation procedures for Bargaining Unit Employees |
| Police | 15, Hours and Working Conditions 24, Insurance Coverage and Premiums 43, Discipline 51, Personnel Files 57, Retirement |