



EMPLOYEE PERSONNEL RECORDS POLICY AND PROCEDURES	
DHR-STW-Policy #: DHR-STW-602.1	Authority: 19 Del. C. c. 7; 29 Del. C. c. 5; Merit Rules 16.1
Effective Date: January 1, 2025	Revision Date: February 10, 2025
Supersedes: January 25, 2023; State of Delaware Employee File Guidelines Rev. 10/2014; Guidelines for Reference Checks OMB/HRM 6/2007; Guidelines for Interagency Access to Personnel Records During the Hiring Process OMB/HRM 6/2007	Signature: 
Application: Executive Branch Agencies	

**1. Policy Purpose Statement**

To establish employee personnel records’ requirements for maintenance, review, transfer, and access to employee personnel records during a hiring process.

**2. Scope**

This policy applies to personnel records of Executive Branch employees, including unpaid interns, joint employees, and apprentices, whether full-time, part-time, or casual/seasonal.

The terms of this policy supersede any statewide or related Executive Branch Agency policy and procedure.

Elected Offices and Judiciary Members may elect to adopt and administer the policy at their offices and with their employees.

**3. Definitions and Acronym**

- **Administrative File:** Documents related to the employee’s hiring and employment at their current position at an employing agency.
- **Applicant:** Current, previous, or future state employee applying for a position within a State Executive Branch Agency.
- **Authorized Personnel Records Staff (APRS):** DHR staff supporting State Agencies who have been authorized and designated to access Employee Personnel Records and to request and receive interagency references.
- **Controlled access:** After obtaining permission of the appointing authority, employees shall be scheduled to examine their records under the supervision of those charged with maintaining such records.
- **CSE:** Creditable Service of Employment Form.
- **Electronic Filing System:** Application where employee personnel records are maintained by DHR for Executive Branch employees. As of the issuance of this version of policy, this refers to OnBase.
- **Employing (Losing) Agency:** The State Agency where the employee is currently working or previously worked.

- **Grievance File (ELR File):** File containing documents related to grievances, complaints, and investigations.
- **HIPAA:** The acronym for the Health Information Portability and Accountability Act, which was enacted by Congress in 1996, established national regulations for the use and disclosure of an individual's health information. The purpose of HIPAA can be outlined in three main topics: (1) The Privacy Rule sets standards for the protection of health information; (2) The Security Rule sets standards for protecting health information that is held or transferred in electronic form; and (3) The Breach Notification Rule establishes the actions to be taken in the event a breach occurs.
- **Hiring (Gaining) Agency:** The State Agency where the applicant has applied for a position vacancy.
- **Hiring Manager:** The vacant position's supervisor or other employee responsible for filling of a vacant agency position.
- **Medical File:** File containing documentation of an employee's illness, injuries, prognosis and treatment that are used to determine eligibility for Americans with Disability Act (ADA) requests for accommodation, disability (long term and short term), and Family and Medical Leave Act (FMLA) eligibility. This employee medical records contains HIPAA and non-HIPAA documents.
- **Master Personnel Record:** For this Policy, the Master Personnel Record includes the following files or folders: Personnel, Administrative, Medical-HIPPA and non-HIPPA and Grievance. The Medical and Grievance files are to be kept separate from the Master Personnel Record.
- **PHRST:** The State of Delaware's central payroll operation group for all state agencies, school districts, and charter schools. The Payroll Human Resources Statewide Technology (PHRST) system is an integrated software application and is the Human Capital Management (HCM) component of the State of Delaware's Enterprise Resource Planning (ERP) system. Within the ERP system, PHRST administers processes involving human resources, benefits, payroll, time reporting, and is the system of record.
- **Personnel File:** Any application, if maintained by the employer, for employment, wage or salary information, notices of commendations, warning or discipline, authorization for a deduction or withholding of pay, fringe benefit information, leave records, employment history with the employer, including salary information, job title, dates of changes, retirement record, attendance records, performance evaluations, and medical records. The term "personnel file" shall not include records of an employee relating to the investigation of a possible criminal offense, letters of reference, documents that are being developed or prepared for use in civil, criminal, or grievance procedures, or materials that are used by the employer to plan for future operations or information available to the employee under the Fair Credit Reporting Act [15 U.S.C. §§ 1681-1681t].<sup>1</sup>
- **Transfer:** Any movement between positions in the same pay grade as long as the employee meets the job requirements. For the purposes of this Policy only, the term Transfers also includes promotions and demotions.
- **VS1:** Verification of Service Form.

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<sup>1</sup> 19 § 731(3) in part, The term "personnel file" shall not include records of an employee relating to the investigation of a possible criminal offense, letters of reference, documents which are being developed or prepared for use in civil, criminal or grievance procedures or materials which are used by the employer to plan for future operations or information available to the employee under the Fair Credit Reporting Act [15 U.S.C. §§ 1681-1681t].

#### 4. Policy

##### Employee Records Maintenance

- a. A Master Personnel Record for each employee shall be established and maintained by the Department of Human Resources (DHR).
- b. Personnel records are confidential and shall be maintained by authorized Personnel Records staff (APRS).
  - Agencies shall develop and maintain a list of Designated DHR Personnel Records staff and assure that these Authorized DHR staff have completed the DHR Confidentiality Statement. This list will be shared with DHR's electronic personnel records system administrators and with the Employee Engagement team at Talent Management annually and whenever there is an update.
  - Unauthorized access or disclosure of any portion of an employee's personnel records may be grounds for dismissal.
  - DHR staff who are not authorized and designated to access Employee Personnel Records shall not access these confidential files. These files may only be sent or emailed for purposes allowed in this policy.
  - Designated DHR staff who are not responsible for benefits administration shall not access an employee's HIPAA file unless authorized by the DHR Secretary.
  - As employees separate from DHR, the agency is to inform DHR's electronic personnel records system administrators to withdraw access to the system for the employee separating.
- c. The Master Personnel Record and other employee records shall be readily available for review by the Secretary or the Secretary's designee.
- d. At the discretion of the DHR Secretary, the Master Personnel Record and other employee records may be maintained in either physical (hard) copies or electronic format.
- e. DHR offices shall be required to maintain all hard copy or electronic Master Personnel Records and associated employee records of employees (full-time, part-time, casual/seasonal, etc.), hired as of the original effective date of this policy<sup>2</sup> in the format that follows: File colors are included for hard copy file maintenance.
  - i. Personnel File (Blue).
  - ii. Administrative File (Yellow) – documents related to the employee's hiring at their current position at an employing agency.
- f. The Medical files shall be maintained separately from the Personnel, Grievance or Administrative files.
  - i. The HIPAA Medical File (Red) shall contain HIPAA<sup>3</sup> regulated documents and materials.

<sup>2</sup> Existing hard copy Personnel Records [for full-time and part-time employees] at the time of this Policy's original effective date of January 25, 2023 need not be updated to this format.

<sup>3</sup> HIPAA applies to an employer's group health plan. Generally, the privacy rule requires employers to obtain authorization from an employee when PHI received through the Group Health Plan is used for purposes other than treatment, payment, or health plan operations. <https://dhr.delaware.gov/benefits/> or for SBO/HIPAA: <https://dhr.delaware.gov/benefits/hipaa/index.shtml>

- ii. The non-HIPAA Medical File (Purple) shall contain non-HIPAA regulated confidential documents and materials.
- g. The Grievance file, which includes documents related to grievances, complaints, and investigations, shall be maintained separately from the Master Personnel Records.<sup>4</sup>
  - Any complaint or grievance in process that cannot be completed shall have documentation as to the reason it is incomplete.
- h. Documents in hard copy and electronic files are to be filed in chronological order in each section with the most recent documents on top.
- i. With the exception of the employee's application and reference checks that are to be maintained in the personnel file, recruitment packets containing other applications and reference checks of unselected applicants, interview notes, and the referral list should be returned to the designated recruitment/applicant services representative for storage/reference. Applications and reference checks may be maintained electronically in DHR's Recruitment/Hiring system.
- j. Employees shall have controlled access to their Personnel records, per Merit Rule 16.2.
- k. For employees leaving state employment, electronic files shall be stored on DHR's electronic filing system and designated Inactive or if hard copy, at the former employee's last agency employed with other separated employee files. Both shall be archived in accordance with the State's retention schedule, hard copies to Public Archives, electronic files in the Electronic Filing System, and labeled Inactive.
- l. The State's learning management system, the Delaware Learning Center (DLC), is the system of record for employee training and policy acknowledgment. Any historical training records or training taken outside the DLC shall be kept in the assigned section of the Personnel File. The training file may include training completion certificates, training requests, tuition reimbursement requests, and other training-related documentation.
- m. DHR representatives assigned to agencies shall provide verification of mandated statewide policy acknowledgment and/or statewide training attendance to the authorized State individual for any employee proceeding (i.e., grievance hearing, discrimination charge, etc.) as needed.

#### Interagency (IAR) Access to (Master) Personnel File for Hiring Process

- a. The DHR Secretary or Designated DHR staff may summarize or otherwise convey relevant information from these records to APRS staff (hiring manager's designee), such as job performance, attendance (only the number/duration of non-FMLA covered absences may be released), and discipline, while maintaining medical records confidentiality and applying the applicable selection standards set forth in the Merit Rules that govern the subject selection process.

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<sup>4</sup> 19 § 731(3).

- b. Upon request, the Master Personnel Records shall be made available for review to the Designated DHR Staff at the Hiring agency as allowed by this policy.
- c. The Hiring Manager shall request an Interagency Reference (IAR) from their agency's Designated DHR or APRS staff if the top choices for the applicant(s) are or have been previously employed with a state agency as part of the reference checking process.
- d. Only designated DHR staff (APRS) from the state Hiring Agency may request and provide relevant information from the Master Personnel Records of applicants currently employed by another state agency and who are applying for a position with the Hiring Agency.
- e. Hiring Agency requests shall be reasonable and use the IAR *Operating Procedure (OP)* linked to this policy.
- f. Employing Agencies shall accommodate IAR requests and respond in a time frame that facilitates the Hiring Agency's ability to expedite applicant assessment and the hiring process, generally within 3 business days.
- g. To maintain the confidentiality of records in accordance with Merit Rule 16.1, all communications about the review of records shall be made by authorized agency human resource staff, and only they shall be permitted to review these records.
- h. Employing Agencies shall only disclose accurate and factual information that has been documented in the employee's Master Personnel Record and is allowed per this policy.

#### Master Personnel Records Transfer

- a. When Master Personnel Records are requested, electronic versions of the Master file shall only be provided as encrypted files and if hard copy, it shall be sent securely, to the appropriate and authorized DHR staff member.
- b. When an employee transfers from one state agency to another state agency, access to the Master Personnel Record files shall be provided to the Hiring Agency's DHR office securely, except for the Administrative File and the Grievance file. The Administrative file is to be appropriately purged per the Public Archives Retention Schedule for state agencies by HR staff prior to forwarding to the Hiring Agency.
  - If an employee separates from a state agency to transfer to another state agency, Administrative file documents are to be purged per the retention schedule or prior to transferring the Master Personnel Record to another state agency, whichever date comes first prior to employee transfer.
  - No copies of the Personnel File are to be maintained at the employee's former DHR office.
- c. The Grievance File shall be maintained by the original employing agency if an employee transfers to another State agency in accordance with the state's retention schedule.

### Employee Personnel Records Retention

- a. All employee files shall be retained in accordance with the State's retention schedule for State Agencies prepared and published by Delaware Public Archives and in accordance with federal and/or state law and litigation requirements.
- b. The consent of the State Archivist is required prior to the disposal of any employee personnel records<sup>5</sup>. Agencies may complete one Destruction Notice annually listing all documents and dates to be destroyed that year.

### Master Personnel Records and Medical Files Review

- a. Upon request, employees shall have controlled access to the files in their Master Personnel Records. After obtaining written permission from their agency HR, employees shall be scheduled to examine their files under the supervision of their agency HR. An agency retains the right to protect the employer's file from loss, damage, or alteration to assure the integrity of the files. Medical file(s) may also be available for controlled employee access.
- b. An employee is not permitted to remove the employee's own Master Personnel Records, any part thereof, or a copy of the contents of such file, from the agency's premises where it is made available for inspection.
- c. If upon inspection an employee disagrees with any of the information contained in their Master Personnel Records, removal or correction of such information may be agreed upon by the employee and the agency. If the employee and agency cannot agree upon such removal or correction, then the employee may submit a written statement explaining the employee's position. Such statement shall be maintained as part of the employee's personnel file of the personnel records and shall accompany any transmittal or disclosure from such file or records made to a third party.
- d. An agency shall provide sufficient inspection time commensurate with the volume content of the personnel records.
- e. Except for special circumstances, the inspection of personnel records by the employee is limited to once every calendar year.

## **5. Procedures**

### Employee Records Maintenance

- a. The following contains lists of individual records, hard copy or electronic, although not exhaustive, required to be maintained by DHR in the Master Personnel Record and related employee records in the following segmented format:
  - 1) Personnel File (blue)**
    - **Section 1 - Data Changes**
      - Personnel Action Requests

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<sup>5</sup> 29 Del. C. §504

- PHRST Transactions (excluding benefits enrollment)
- New Hire Letter (Offer/Appointment Letters)
- Essential Employee Memo
- Promotion Packets (Career Ladder)
- Advanced Salary
- Transfer Forms
- Resignation Letter
- Retirement
- Data Changes (Pre-PHRST documents only)
- New Hire Packets, electronic AdobeSign documents, (prior to calendar year 2025)
- Board Member documents
- **Section 2 – Payroll/Personal information**
  - I-9 Employment Eligibility Form
  - Driver's License/Photo ID copy
  - Social Security Card copy
  - E-Verify confirmation
  - W-4 Records
  - P-1 Pension Actuarial Information
  - Union Dues info
  - Direct Deposit Information
  - SECC Pledge Form
  - Health Benefit Refund
  - General Deduction Summary
  - United Way Pledge Card
  - Deferred Compensation
  - Pension (Member's Annual Statement; Designation; etc.)
  - Credit Union
  - Savings Bonds
  - Payroll Information
  - Recruitment & Retention Incentive records
- **Section 3 - Performance Review/Plan**
  - Performance Plans (regular or Improvement) / Review
  - Active Discipline/Suspensions (Less than 2 years old for non-union employees; CBA's may have a different term for covered employees)
  - Commendation Letters
- **Section 4 – Timekeeping Records**
  - Timecards/Leave Records
  - VS1/CSE Forms
  - Donated Leave
  - Adjusted Service Date Audit
  - Jury Duty Summons
  - Work Schedule (includes Alternate Working Arrangements (AWA) Agreements, Telecommuting Agreement, AWS Schedule)
  - Military Leave
- **Section 5 - Miscellaneous Documents**
  - Employee Information/Emergency Contact Forms
  - Request by an Employee to Review File
  - Employment/Wage Verification

- EEO Reporting Form
- Miscellaneous Documents
- **Section 6** – Onboarding, Training, etc.
  - Application/Resume
  - Professional License/Other Certifications
  - Authorized Driver Designation
  - Policy and Statement Acknowledgments (Signed Oath of Office, Agency policies acknowledgment, and related documents prior to the DLC becoming the system of record for policy and statement acknowledgment)
  - Training Related Materials – certificates, class attendance documentation prior to the DLC becoming the system of record for employee training
  - Education Reimbursements
  - Military Related Verification Documents (DD214, etc.)
  - Other Internal Agency Approval Forms
  - Onboarding Miscellaneous Information/Onboarding Checklists
  - Off-Duty Weapon

**2) Administrative File (yellow)**

- References (External or Interagency Reference checks)
- Criminal background check (CBC);
- Disciplinary Letters/Suspensions (Over 2 years old)
- Drug Testing Results-Pre-employment
- Copy of Employee Driver's Licenses/ Photo ID
- Garnishment/Wage Attachments
- Non-resident Visa or related documents
- Employee Social Security Card

**3) Medical HIPAA File (red)**

- Group Health Plan
- Dental plan
- Employee Assistance Programs (EAP)
- Vision and Hearing programs
- Pharmacy Benefit
- Health Care Flexible Spending Account (FSA)
- Health Reimbursement Account (HRA)
- Consolidated Omnibus Budget Reconciliation Act (COBRA)
- Wellness Programs
- Employee's Written Authorization for access to HIPAA file
- Blood Bank
- Adoptions
- Medicare Enrollment
- Benefit Plan Verification (covered dependents' birth certificates and social security cards, marriage licenses, divorce decrees, court custody, adult child disability, etc.)

**4) Medical – Confidential Non-HIPAA File (purple)**

- FMLA requests
- Parental Leave Requests

- Sick Leave requests or justifications
- ADA records
- Workers' Compensation records
- OSHA reports
- Short Term Disability (STD) records
- Long Term Disability (LTD) records
- Dependent Care Flexible Spending Account (FSA) Forms
- Group Universal Life and Accidental Death & Dismemberment (AD&D) records
- Return-To-Work information
- Drug and alcohol workplace results-Non-Pre-employment
- Fitness for Duty Exams
- Disability pension applications
- Life insurance enrollment and beneficiary designations (if applicable)
- Line of Duty Death Benefits documentation (if applicable)
- COVID-19 PEL records
- Qualifying Events
- Medical Release(s)
- Miscellaneous Medical, Non-HIPAA Documents

**5) Grievance (ELR) File (green)**

- Complaint(s)
- Grievance(s)
- Investigation Documentation

DHR may generate verification of policy acknowledgment and/or training attendance through the [DLC User Transcript Search Instructions](#).

**Interagency Access**

- a. For interagency access to employee records, the Hiring Manager shall request in writing (email is acceptable), through their agency's APRS<sup>6</sup> a reference check from the Employing Agency APRS of current or former employee who are being considered for hire, as soon as the interview process is completed. The request shall be specific such as: Current/Former Job Title; Dates of employment; Job performance (Performance Evaluations; recognition awards; or other documentation addressing performance); Attendance (Recent Personal Leave history records); Discipline (Active discipline within the past two calendar years). To provide disciplinary background, Designated DHR staff shall check the applicant's file in PHRST and the Master Personnel Record and shall report only two years back from the date the IAR was requested. This time frame may vary depending on CBA terms.
- b. If a current or former employee has filed a grievance, complaint, charge, or lawsuit, no information about this should be disclosed to any outside employer or state agency.
- c. APRS use the IAR OP to obtain an IAR.

<sup>6</sup> At Talent Management-centralized agencies, Employee Benefits Services staff are the APRS for those agencies.

- d. Employing Agencies shall accommodate such requests and respond in a time period that facilitates the hiring agency's ability to expedite applicant assessment and the hiring process (generally, within 3 business days).
- e. Interagency Reference checks will be maintained in the Administrative file.

#### Master Personnel Records Transfer

- a. To transfer a hard copy Master Personnel Record when an employee transfers from one State agency to another State agency directly, the record shall be appropriately sealed, clearly marked as confidential, and sent through an encrypted program if electronic. If files are maintained and sent hard copy, the Medical files and related information shall be forwarded separately from the Master Personnel Records files.
- b. To transfer an electronic Master Personnel Record when an employee moves from one state agency to another state agency directly, access to the Master Personnel Record files shall be provided to the Hiring Agency's DHR office by the following:
  - For an Executive Branch agency (digitized), the employee's personnel record will become available to the Hiring agency once PHRST is updated with the separating action/reason and the Personnel Action Form or other similarly purposed document is loaded into the electronic personnel records system that triggers the update.
  - For non-Executive Branch agencies (non-digitized), the personnel record is to be emailed encrypted directly from the electronic personnel records system once the Hiring agency updates PHRST.

#### Employee Personnel Records Retention

- a. All employee files shall be retained in accordance with the [State's retention schedule](#) for state agencies prepared and published by Delaware Public Archives and in accordance with federal and/or state law and litigation requirements.
- b. The Public Archives Destruction Notice shall be used for the disposal of employee personnel records. Agencies may complete one Destruction Notice annually listing all documents and dates to be destroyed that year.

#### Master Personnel Records Review

- a. Upon an employee's request, HR shall schedule an appointment for an employee to review their Master Personnel Record including their Administrative file and their separate Medical file(s) under the supervision of HR staff during regular business hours.
- b. An employee is permitted to take notes during the review of their Employee Personnel Records.

**6. Exclusions or Exceptions**

- The Department of Education (DOE) is responsible for the development of policies in compliance with the Federal Code, applicable State Code, Title 14 of the Delaware Code, and applicable regulations.
- The Delaware State Housing Authority (DSHA) is responsible for the development of policies in compliance with Federal Code, applicable State Code, and 29 Del. C. § 86 and 31 Del C. § 4013.
- This Policy does not apply to Non-Executive Branch Agencies or the Judiciary unless this policy has been affirmatively adopted by Non-Executive Branch Agencies or the Judiciary.

**7. Dissemination And Training**

- a. This policy will be distributed to new employees at the commencement of employment by the Delaware Learning Center (DLC) or their HR representative with a 30-day time frame to acknowledge.
- b. Employees and individuals with access to HR, benefits and/or payroll data as part of their job-related tasks, as well as supervisors and managers, must take the required HIPAA training on the first day of employment or prior to their first day, if possible, and annually after that.
- c. DHR designated staff shall attend required trainings as prescribed by DHR.

**8. Data Reporting**

N/A

**9. Associated Policy/Regulations/Information**

- [State Agency General Records Retention Schedule \(delaware.gov\)](#)
- [HIPAA Act](#)
- [I-9 Retention and Storage](#)
- [Interagency Reference Check Operating Procedure](#)
- [DLC User Transcript Search Instructions](#)

**10. Appendices and Forms Associated with this Policy**

- [DE Public Archives Destruction Notice Form](#)

**11. Policy Owner**

- Division Name: Division of Talent Management
- Policy Owner: Employee Engagement Section
- Website: [DHR – Division of Talent Management](#)

This policy is not intended to create any individual right or cause of action not already existing and recognized under State and Federal law.