

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) AMENDED NOTICE OF PUBLIC
2.21.6608, 2.21.6612, and 2.21.6613) HEARING ON PROPOSED
pertaining to the Employee Records) AMENDMENT
Management Policy)

TO: All Concerned Persons

1. On August 18, 2017, the Department of Administration published MAR Notice No. 2-21-563 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1316 of the 2017 Montana Administrative Register, Issue Number 16. Because the department is proposing a change to one of the rules originally proposed for amendment, the hearing is being rescheduled to September 28, 2017, at 10:00 a.m., in Room 136 of the Mitchell Building, 125 N. Roberts Street, Helena, Montana.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on September 18, 2017, to advise us of the nature of the accommodation needed. Please contact Ann Brewer, Department of Administration, P.O. Box 200127, 125 N. Roberts Street, Helena, Montana 59620; telephone (406) 444-3879; fax (406) 444-0703; Montana Relay Service 711; or e-mail annbrewer@mt.gov.

3. After additional consideration, the department is proposing a revision to the proposed amendment of ARM 2.21.6612(2) to further clarify the treatment of information regarding an investigation. The initial proposed language, stating in part that "Other documented information related to an investigation, while not a part of the employee personnel records, is confidential..." could be interpreted to exclude that information from public disclosure. The proposed revision clarifies the required actions if a request for this information is received. All other proposed amendments remain as in the original notice.

4. The rule is now proposed to be amended as follows, new matter underlined, deleted matter interlined:

2.21.6612 RECORDS THAT CONSTITUTE EMPLOYEE PERSONNEL RECORDS (1) through (1)(k) remain as proposed.

(2) ~~Employee personnel records do not include documents, information, or other evidence developed as part of an investigation. If an investigation results in disciplinary action, the disciplinary action record is an employee personnel record. Investigations include, but are not limited to, grievances, violations of agency rules, policies, and procedures, or matters that may result in civil or criminal liability.~~
Disciplinary action records resulting from an investigation are part of the employee

personnel records and are confidential. Other documented information related to an investigation, while not a part of an employee record, will be treated as confidential information to protect the privacy of the individuals involved. If a request for the information is made, the agency shall review the information and balance the merits of public disclosure against an individual's right to privacy to determine whether the information or portions of the information may be released.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Ann Brewer, Department of Administration, P.O. Box 200127, Helena, MT 59620; telephone (406) 444-3879; Montana Relay Service 711; fax (406) 444-0703; or e-mail annbrewer@mt.gov, and must be received no later than 5:00 p.m., October 10, 2017.

6. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules>. The department strives to make its online version of the notice conform to the official published version, but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

By: /s/ John Lewis
John Lewis, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State August 28, 2017.