
164-1-34 | Contingency line items and change orders.

If the project agreement contains a contingency line item, such funds may only be used to fund expenses incurred in change orders.

For an expense in a change order relating to quantity to be eligible for payment or reimbursement, it must be necessary and integral to complete physical scope of the project as described in the project agreement. Change order expenses eligible for funding may be for the reconciliation of estimated quantities to those quantities of work performed, adjustments for contract specified payments or deductions, changes in the contract documents or specifications, changes in materials requirements, and revision of a contract completion date. Change order expenses relating to material eligible for funding are changes in material requirements due to unavailability of the specified material, acceptance of a superior material at no additional cost, and acceptance of a non-specification material or a cost savings achieved using a non-specification material incorporated into the work that is performing satisfactorily.

For a change order relating to a change in scope expenses to be eligible for payment or reimbursement, it must be necessary and integral to complete physical scope of the project as described in the project agreement. Change order expenses associated with a change in scope that are not necessary for the completion of the project specified in the project agreement, are the responsibility of the recipient, unless the district integrating committee has approved such work and the director or administrator has amended the project agreement accordingly. Change order documentation must be submitted with the disbursement request that includes the invoice containing the change order. Documentation supporting the request for funding a change order that includes a change in scope must include a description and explanation for the change order and be signed by the authorized project manager certifying the change order is necessary to complete the project as specified in the physical scope described in the project agreement. Documentation will be reviewed and, at the discretion of the director, approved for payment or reimbursement.

164-1-35 | District methodologies.

Districts shall, on an annual basis, create methodologies to be used in evaluating and ranking project applications submitted to the district. These methodologies shall be submitted to the director for review and approval or disapproval. If the director disapproves the submitted methodologies, the director shall communicate the reason(s) for disapproval to the district, and the district shall revise the methodologies and resubmit them to the director for approval. District methodologies must include a two-tier tiebreaker using the methodology's criteria. If a district is not going to change its methodologies, the district shall notify the director that the methodologies will not be changed. District proposed methodologies shall be submitted to the director along with the annual program schedule. The program schedule shall set forth the timing requirements for submission of applications and the processing of applications by the district and shall include a current roster of the district integrating committee and their contact information. Districts shall provide applicants with a period of no less than sixty days after the director's approval of their methodologies to accept project applications.

164-1-36 | Engineering costs.

Eligible project costs for engineering services will be reviewed by the commission and evaluated according to typical engineering expenses as determined by the director. The project agreement shall specify the amount of approved engineering expenses for all phases of design and inspection, with each delineated separately. Any engineering cost more than the amount approved in the project agreement shall be the responsibility of the applicant.

164-1-37 | Late loan payments and access to funds.

A local subdivision who receives loan funds shall take all actions necessary to ensure that timely payments are made on their loans as required in the loan documents and in response to biennial invoicing. If a local subdivision fails to make timely payments, it will not receive from the commission disbursements on its active projects and any application for funding for new projects will not be accepted in the workwise portal.

164-1-38 | Loan assistance.

At the recommendation of the district and approval of the director, an applicant may receive funding in the form of a grant to pay the interest accruing on construction debt during the period of construction and prior to the issuance of post construction permanent financing by the commission. To qualify for this grant, construction must have commenced within three years prior to the date of the project agreement.

This grant may be applied for as part of a project which is eligible for a grant, loan or combination of a grant and loan, but requires a separate application to be submitted to the commission for consideration.

164-1-39 | Privacy policy.

(A) The purpose of this rule is to establish the requirements for regulating access to confidential personal information that is maintained by the commission.

(B) For the purposes of administrative rules promulgated in accordance with section 1347.15 of the Revised Code, the following definitions apply:

(1) “Access” when used in this rule as a noun means an instance of copying, viewing, or otherwise perceiving. Access when used in this rule as a verb means to copy, view, or otherwise perceive.

(2) “Acquisition of a new computer system” means the purchase of a “computer system,” as defined in this rule, that is not a computer system currently in place nor one for which the acquisition process has been initiated as of the effective date of the commission rule addressing requirements in section 1347.15 of the Revised Code.

(3) “Computer system” means a “system,” as defined by section 1347.01 of the Revised Code, that stores, maintains, or retrieves personal information using electronic data processing equipment.

(4) “Confidential personal information” (CPI) has the meaning as defined by division (A)(1) of section 1347.15 of the Revised Code and identified by rules promulgated by the Commission in accordance with division (B)(3) of section 1347.15 of the Revised Code that reference the federal or state statutes or administrative rules that make personal information maintained by the commission confidential.

(5) “Commission” means the Ohio public works commission.

(6) “Employee” means each commission employee regardless of whether the employee holds an elected or appointed office or position within the commission.

(7) “Incidental contact” means contact with the information that is secondary or tangential to the primary purpose of the activity that resulted in the contact.

(8) “Individual” means a natural person or the natural person’s authorized representative, legal counsel, legal custodian, or legal guardian.

(9) “Information owner” means the individual appointed in accordance with division (A) of section 1347.05 of the Revised Code to be directly responsible for a system.

(10) “Person” means a natural person.

(11) “Personal information” has the same meaning as defined in division (E) of section 1347.01 of the Revised Code.

(12) “Personal information system” means a “system” that “maintains” “personal information” as those terms are defined in section 1347.01 of the Revised Code. “System” includes manual and computer systems.

(13) “Research” means a methodical investigation into a subject.

(14) “Routine” means commonplace, regular, habitual, or ordinary.

(15) “Routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person” as that phrase is used in division (F) of section 1347.01 of the Revised Code means personal information relating to employees and maintained by the agency for internal administrative and human resource purposes.

(16) “System” has the same meaning as defined by division (F) of section 1347.01 of the Revised Code.

(17) “Upgrade” means a substantial redesign of an existing computer system for the purpose of providing a substantial amount of new application functionality, or application modifications that would involve substantial administrative or fiscal resources to implement, but would not include maintenance, minor updates and patches, or modifications that entail a limited addition of functionality due to changes in business or legal requirements.

(C) Procedures for accessing confidential personal information for personal information systems, whether manual or computer systems.

(1) Personal information systems of the commission are managed on a need-to-know basis whereby the information owner determines the level of access required for a commission employee to fulfill the employee’s job duties. The determination of access to confidential personal information shall be approved by the employee’s supervisor and the information owner prior to providing the employee with access to confidential personal information within a personal information system. The commission shall establish procedures for determining a revision to an employee’s access to confidential personal information upon a change to that employee’s job duties including, but not limited to, transfer or termination. Whenever an employee’s job duties no longer require access to confidential personal information in a personal information system, the employee’s access to confidential personal information shall be removed.

(2) Individual’s request for a list of confidential personal information.

Upon the signed written request of any individual for a list of confidential personal information about the individual maintained by the commission, the commission shall do all the following:

(a) Verify the identity of the individual by a method that provides safeguards commensurate with the risk associated with the confidential personal information;

(b) Provide the individual with the list of confidential personal information that does not

relate to an investigation about the individual or is otherwise not excluded from the scope of Chapter 1347. of the Revised Code; and

(c) If all information relates to an investigation about that individual, inform the individual that the commission has no confidential personal information about the individual that is responsive to the individual's request.

(3) Notice of invalid access.

(a) Upon discovery or notification that confidential personal information of a person has been accessed by an employee for an invalid reason, the commission shall notify the person whose information was invalidly accessed as soon as practical and to the extent known at the time. However, the commission shall delay notification for a period necessary to ensure that the notification would not delay or impede an investigation or jeopardize homeland or national security. Additionally, the commission may delay the notification consistent with any measures necessary to determine the scope of the invalid access, including which individuals' confidential personal information invalidly was accessed, and to restore the reasonable integrity of the system.

“Investigation” as used in this paragraph means the investigation of the circumstances and involvement of an employee surrounding the invalid access of confidential personal information. Once the commission determines that notification would not delay or impede an investigation, the commission shall disclose the access to confidential personal information made for an invalid reason to the person.

(b) Notification provided by the commission shall inform the person of the type of confidential personal information accessed and the date(s) of the invalid access.

(c) Notification may be made by any method reasonably designed to accurately inform the person of the invalid access, including written, electronic, or telephone notice.

(4) Appointment and duties of a data privacy point of contact.

(a) The director of the commission shall designate an employee of the commission to serve as the data privacy point of contact.

(b) The data privacy point of contact shall work with the chief privacy officer within the Ohio commission of administrative services office of information technology to assist the commission with both the implementation of privacy protections for the confidential personal information that the commission maintains and compliance with section 1347.15 of the Revised Code and the rules adopted thereunder.

(c) The data privacy point of contact shall ensure the timely completion of the “privacy impact assessment form” developed by the Ohio commission of administrative services office of information technology.

(D) Valid reasons for accessing confidential personal information.

Pursuant to the requirements of division (B)(2) of section 1347.15 of the Revised Code, this rule contains a list of valid reasons directly related to the commission's exercise of its powers or duties, for which only employees of the commission may access confidential personal information regardless of whether the personal information system is a manual system or computer system.

Performing the following functions, as part of the employee's assigned duties on behalf of the commission, constitute valid reasons for authorized employees of the commission to access confidential personal information:

- (1) Responding to a public records request;
- (2) Responding to a request from an individual for the list of confidential personal information the commission maintains on that individual;
- (3) Administering a constitutional provision or duty;
- (4) Administering a statutory provision or duty;
- (5) Administering an administrative rule provision or duty;
- (6) Complying with any state or federal program requirements;
- (7) Processing or payment of claims or otherwise administering a program with individual participants or beneficiaries;
- (8) Auditing purposes;
- (9) Licensure or certification processes;
- (10) Investigation or law enforcement purposes;
- (11) Administrative hearings;
- (12) Litigation, complying with an order of the court, or subpoena;
- (13) Human resource matters (e.g., hiring, promotion, demotion, discharge, salary/compensation issues, leave requests/issues, timecard approvals/issues);
- (14) Complying with an executive order or policy;
- (15) Complying with a commission policy or a state administrative policy issued by the Ohio commission of administrative services, the office of budget and management or other similar state agency;

(16) Complying with a collective bargaining agreement provision; or

(17) Research in the furtherance of commission specific programs in so far as allowed by statute.

(E) The following federal statutes or regulations or state statutes and administrative rules make personal information maintained by the commission confidential and identify the confidential personal information within the scope of rules promulgated by this commission in accordance with section 1347.15 of the Revised Code:

(1) 5 U.S.C. 552a. (social security numbers).

(2) 42 U.S.C. 1320d and 45 C.F.R. parts 160 and 164 (protected health information under the Health Insurance Portability and Accountability Act).

(3) 42 U.S.C. 9501 and 42 U.S.C. 10841 (patient records).

(4) 42 C.F.R. 482.13 (patient records).

(5) 42 C.F.R. Part 2 (confidentiality of alcohol and drug abuse patient records).

(6) 42 U.S.C. 1396a(a) (medicaid records).

(7) Sections 5119.27 and 5119.28 of the Revised Code (confidentiality of records).

(8) Sections 2305.24, 2305.25, 2305.251, 2305.252, 2305.253 and 5122.32 of the Revised Code (quality assurance and peer review records).

(9) Section 5122.31 of the Revised Code (patient certificates, applications, records, and reports).

(10) Section 5122.311 of the Revised Code (notification of bureau of criminal identification and investigation of adjudication of mental illness).

(11) Paragraph (I) of rule 5122-1-31 of the Administrative Code (voter registration of consumers and absentee voting assistance in behavioral healthcare organizations of the integrated behavioral healthcare system).

(12) Paragraph (D)(3) of rule 5122-2-25 of the Administrative Code (morbidity and mortality events).

(13) Paragraph (D)(4)(e) of rule 5122-3-13 of the Administrative Code (incident reports).

(F) Restricting and logging access to confidential personal information in computerized personal information systems.

For personal information systems that are computer systems and contain confidential personal information, the commission shall do the following:

(1) Access restrictions.

Access to confidential personal information that is kept electronically shall require a password or other authentication measure.

(2) Acquisition of a new computer system.

When the commission acquires a new computer system that stores, manages or contains confidential personal information, the commission shall include a mechanism for recording specific access by employees of the commission to confidential personal information in the system.

(3) Upgrading existing computer systems.

When the commission modifies an existing computer system that stores, manages or contains confidential personal information, the commission shall make a determination whether the modification constitutes an upgrade. Any upgrades to a computer system shall include a mechanism for recording specific access by commission employees to confidential personal information in the system.

(4) Logging requirements regarding confidential personal information in existing commission computer systems.

(a) The commission shall require commission employees who access confidential personal information within computer systems to maintain a log that records their access.

(b) Access to confidential information is not required to be entered into the log under the following circumstances:

(i) The commission employee is accessing confidential personal information for official commission purposes, including research, and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.

(ii) The commission employee is accessing confidential personal information for routine office procedures and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.

(iii) The commission employee comes into incidental contact with confidential personal information and the access of the information is not specifically directed toward a specifically named individual or a group of specifically named individuals.

(iv) The commission employee accesses confidential personal information about an individual based upon a request made under either of the following circumstances:

(a) The individual requests confidential personal information about himself/herself

(b) The individual makes a request that the commission takes some action on that individual's behalf and accessing the confidential personal information is required in order to consider or process that request

(v) For purposes of this paragraph, the commission may choose the form or forms of logging, whether in electronic or paper formats.

(5) Log management.

The commission shall issue a policy that specifies the following:

(a) Who shall maintain the log;

(b) What information shall be captured in the log;

(c) How the log is to be stored; and

(d) How long information kept in the log is to be retained.

(6) Nothing in this rule limits the commission from requiring logging in any circumstance that it deems necessary.

164-1-40 | Project schedule.

An application to fund a project shall provide for a schedule for construction to begin within one year of release of the project agreement. At the discretion of the director, a project may be funded that will commence in the following state fiscal year, if the circumstances relating to the project present a reasonable need to enter into a project agreement in the current fiscal year. Projects funded by the commission must commence construction in the fiscal year set forth in the project agreement. If a project does not commence in the fiscal year set forth in the project agreement, funding for the project shall be terminated. At the discretion of the director, a project that did not commence in the fiscal year set forth in the project agreement may be funded if the reason the project did not commence was due to extenuating and unforeseeable circumstances beyond the control of the applicant.

164-1-41 | Small government.

District integrating committees may select from their unfunded project applications, applications to submit to the small government commission for consideration for funding. The small government program provides grants and loans to villages and townships with populations of less than five thousand. Districts may submit to the small government commission up to five applications for consideration to be funded. All five applications must be ranked and shall receive corresponding district priority points. All five applications will be scored by the small government commission.

164-1-42 | Subdivision codes.

Prior to the submission of an application for funding to the commission, the applicant must request and obtain from the commission an identification code which the commission shall use to identify the applicant. A request for an identification code shall be submitted to the commission by an email to the director from an authorized employee of the applicant. The request shall be made on the applicant's letterhead and shall be signed by such an authorized employee. The applicant must include relevant documentation or an explanation relating to the legal creation of the applicant specifying its form of government, the revised code provisions providing for the entity, and its date of formation.