



**ADMINISTRATIVE DIRECTIVE**

<b>Transmittal:</b>	18-ADM-08
<b>To:</b>	Executive Directors, Voluntary Providers Directors, Developmental Disabilities State Operated Offices Directors, Developmental Disabilities Regional Offices Provider Associations
<b>Issuing OPWDD Office:</b>	Office of Counsel
<b>Date:</b>	August 27, 2018
<b>Subject:</b>	Administrative Appeals Process for Denials of Records Requested Pursuant to 14 NYCRR Part 624
<b>Suggested Distribution:</b>	Incident Management Coordinators Quality Management Staff
<b>Contact:</b>	Office of Counsel (518) 474-7700
<b>Attachments:</b>	

<b>Related ADMs/INFs</b>	<b>Releases Cancelled</b>	<b>Regulatory Authority</b>	<b>MHL &amp; Other Statutory Authority</b>	<b>Records Retention</b>
	ADM 2009-04	14 NYCRR Part 624	MHL §§ 33.23 & 33.25	Six years

**Purpose:**

To define the Administrative Appeal Process for the denial of records requested pursuant to 14 NYCRR 624 Incident/Abuse Reporting, Notification and Investigation Process.

**Background:**

Chapter 24 of the Laws of 2007, also known as Jonathan's Law, created Mental Hygiene Law sections 33.23 and 33.25. These sections were amended in June 2012, with the implementation of the Protection of People with Special Needs Act (PPSNA), to reflect changes in reporting of incidents.

Section 33.23 requires a qualified person to be notified of a reportable incident and offered an opportunity to meet with the provider agency to discuss the reportable incident. The qualified person is also entitled to a written report of actions taken to address the incident, including a redacted copy of the incident report.

Section 33.25 provides for a qualified person to send a written request to the provider agency for copies of records and documents pertaining to reportable incidents. The names and any identifying information of staff or other individuals receiving services must be redacted.

With the implementation of the PPSNA, 14 NYCRR Part 624 was revised to reflect the new statutory requirements for incidents. These changes were first implemented in June 30, 2013, and revised on an emergency basis until final adoption on December 2, 2015. Two provisions, Subdivisions 624.6(j) and 624.8(i), outline the administrative appeal process when a request for records, pursuant to Part 624, has been denied by the provider agency.

**Procedure:**

A requestor denied access to the records and documents requested pertaining to a reportable incident may appeal the denial, in writing, to the Incident Records Appeals Officer (IRAO) designated by OPWDD. The appeal letter should be sent to the following address:

**Incident Records Appeals Officer  
Office of Counsel  
44 Holland Avenue  
3<sup>rd</sup> Floor  
Albany, New York 12229**

The agency issuing the denial will be notified of the appeal and given an opportunity to submit relevant information to the IRAO, including the reasons for denial, within 10 business days of the receipt of such appeal.

The IRAO may also request additional information from the requestor as may be necessary to resolve the appeal.

Within 10 business days of the receipt of complete information, the IRAO will make a determination whether the requested records and/or documents should be released.

The IRAO will issue his or her determination with an explanation of the reasons for the determination to the requestor and the agency.

If so directed by the IRAO, the agency must provide the requested records and/or documents to the requestor.

For further information, or if there are any questions, please contact Counsel's Office at 518-474-7700.

**Records Retention:** Six years