

SCHOOL DISTRICT

ADMINISTRATIVE
REGULATION

801-AR. EXEMPTED RECORDS

To determine if a requested record is exempt from access, the Open Records Officer will consider and apply each exemption separately.

The following records are exempt from public access by a requester in accordance with the Right-To-Know Law.

1. Loss of Funds/Physical Harm/Personal Security - when the disclosure of a record would result in the district's loss of federal or state funds or would reasonably be likely to result in a substantial and demonstrable risk of physical harm to or personal security of an individual.
2. Public Safety - when the disclosure of a record maintained in connection with the military, homeland security, national defense, law enforcement or other public safety activity would reasonably be likely to jeopardize or threaten public safety or public protection activity, or a record that is designated classified by an appropriate federal or state military authority.
3. Safety/Security of Facilities - when the disclosure of a record creates a reasonable likelihood of endangering the safety or physical security of a building, public utility, resource, infrastructure, facility, or information storage system, which may include:
 - a. Documents or data relating to computer hardware; source files; software; and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act.
 - b. Lists of infrastructure, resources and significant special events, including those defined by the federal government in the National Infrastructures Protections, that are deemed critical due to their nature and result from risk analysis; threat assessments; consequences assessments; antiterrorism protective measures and plans; counterterrorism measures and plans; and security needs assessments.
 - c. Building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems; structural elements; technology; communication; electrical; fire suppression; ventilation; water; wastewater; sewage; and gas systems.
4. Computer Systems - when the disclosure of a record regarding computer hardware, software and networks, including administrative and technical records, would reasonably be likely to jeopardize computer security.

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5. Medical Information - when the disclosure of a record of an individual's medical, psychiatric or psychological history or disability status, including an evaluation; consultation; prescription; diagnosis or treatment; results of tests, to include drug tests; enrollment in a health care program or program designed for participation by persons with disabilities, including vocational rehabilitation; workers' compensation and unemployment compensation; or related information would disclose individually identifiable health information.
6. Personal Identification Information - disclosure of the following personal identification information:
 - a. A record containing all or part of an individual's Social Security number; driver's license; driver's license number; personal financial information; home, cellular or personal telephone numbers; personal e-mail addresses; employee number or other confidential personal identification number.
 - b. A spouse's name, marital status, beneficiary or dependent information.
 - c. The home address of a law enforcement officer or judge.

Personal information that must be disclosed includes the name; position; salary; actual compensation or other payments or expenses; employment contract; employment-related contract or agreement; and length of service of a public official or district employee.

The Open Records Officer may redact from a record the name or other identifying information relating to an individual performing an undercover or covert law enforcement activity.

7. Certain Employee Information - disclosure of the following records relating to a district employee:
 - a. A letter of reference or recommendation pertaining to the character or qualifications of an identifiable individual, unless it was prepared in relation to the appointment of an individual to fill a vacancy in an elected office or an appointed office requiring Senate confirmation.
 - b. A performance rating or review.
 - c. The result of a civil service or similar test administered by a Commonwealth agency, legislative agency or judicial agency. The result of a civil service or similar test administered by a local agency shall not be disclosed if restricted by a collective bargaining agreement. Only test scores of individuals who obtained a passing score on a test administered by a local agency may be disclosed.
 - d. The employment application of an individual who is not hired by the district.
 - e. Workplace support services information.

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- f. Written criticisms of a district employee.
 - g. Grievance material, including documents related to discrimination or sexual harassment.
 - h. Information regarding discipline, demotion or discharge contained in a personnel file, except information that applies to the district's final action that results in demotion or discharge.
 - i. An academic transcript.
8. Labor Relations/Negotiations/Arbitration - disclosure of a record pertaining to strategy or negotiations relating to labor relations or collective bargaining and related arbitration proceedings. In the case of the arbitration of a dispute or grievance under a collective bargaining agreement, disclosure of an exhibit entered into evidence at an arbitration proceeding or a transcript of the arbitration or the opinion.

This exemption does not apply to a final or executed contract or agreement between the parties in a collective bargaining agreement, or to the final award or order of the arbitrator in a dispute or grievance procedure.

9. Predecisional Drafts - disclosure of the draft of a bill, resolution, regulation, statement of policy, management directive, or ordinance, or their amendments, prepared by or for the district.
10. Predecisional Deliberations -

Disclosure of a record that reflects:

- a. The internal, predecisional deliberations of the district, its Board members, employees or officials, or predecisional deliberations between district Board members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation; legislative proposal; legislative amendment; contemplated or proposed policy or course of action; or any research, memos or other documents used in the predecisional deliberations, subject to law governing open meetings.

Public records do include a record of any of the above that is not exempt from access by law and which is presented to a quorum for deliberation in accordance with law governing open meetings; a written or Internet application or document that has been submitted to request Commonwealth funds; and the results of public opinion surveys, polls, focus groups, marketing research or similar efforts designed to measure public opinion.

- b. The strategy to be used to develop or achieve the successful adoption of a budget, legislative proposal or regulation.

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11. Trade Secret/Confidential Proprietary Information - disclosure of a record that constitutes or reveals a trade secret or confidential proprietary information.
12. Personal Notes/Working Papers - disclosure of notes and working papers prepared by or for a district public official or employee used solely for that official's or employee's own personal use, including telephone message slips; routing slips; and other materials that do not have an official purpose.
13. Donor Identity - disclosure of records that would disclose the identity of an individual who lawfully makes a donation to the district, unless the donation is intended for or restricted to providing remuneration or personal tangible benefit to a district public official or employee, including lists of potential donors compiled by the district to pursue donations; donor profile information; or personal identifying information relating to a donor.
14. Unpublished Academic Works - disclosure of unpublished lecture notes, unpublished manuscripts, unpublished articles, creative works in progress, research-related material, and scholarly correspondence of a community college or an institution of the State System of Higher Education or one of their faculty members, employees, guest speakers or students.
15. Academic Records - disclosure of academic transcripts, examinations, examination questions, scoring keys and answers to examinations, including licensing and other examinations relating to the qualifications of an individual; examinations given in district schools; and examinations given in institutions of higher education.
16. Criminal Investigations - disclosure of a record of the district or an agency relating to or resulting in a criminal investigation, including:
 - a. Complaints of potential criminal conduct other than a private criminal complaint.
 - b. Investigative materials, notes, correspondence, videos and reports.
 - c. A record that includes the identity of a confidential source or of a suspect who has not been charged with an offense to whom confidentiality has been promised.
 - d. A record that includes information made confidential by law or court order.
 - e. Victim information, including any information that would jeopardize the safety of a victim.
 - f. A record that if disclosed would reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges; deprive an individual of the right to a fair trial or impartial adjudication; impair the ability to locate a defendant or codefendant; hinder an agency's ability to secure an arrest, prosecution or conviction; or endanger the life or physical safety of an individual.

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This exemption does not apply to information contained in a police blotter as defined in law and utilized or maintained by the State Police, local, campus, transit or port authority police department or other law enforcement agency, or in a traffic report except as provided by law.

17. Noncriminal Investigations - disclosure of a district record relating to a noncriminal investigation, including:
 - a. Complaints submitted to the district.
 - b. Investigative materials, notes, correspondence and reports.
 - c. A record that includes the identity of a confidential source, including individuals subject to the Whistleblower Law.
 - d. A record that includes information made confidential by law.
 - e. Work papers underlying an audit.
 - f. A record that if disclosed would reveal the institution, progress or result of a district investigation, except the imposition of a fine or civil penalty; the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement unless the agreement is determined to be confidential by a court; deprive a person of the right to an impartial adjudication; constitute an unwarranted invasion of privacy; hinder an agency's ability to secure an administrative or civil sanction; or endanger the life or physical safety of an individual.
18. Emergency Communications - disclosure of records or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings, unless the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure.
19. DNA/RNA - disclosure of DNA and RNA records.
20. Coroner/Medical Examiner - disclosure of specific records and reports of a coroner or medical examiner.
21. Draft Minutes - disclosure of draft minutes of any School Board meeting until the next regularly scheduled Board meeting, minutes of an executive session, and any record of discussions held in executive session.
22. Real Estate Appraisals/Feasibility Studies - disclosure of the contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by the district relative to the leasing, acquiring, or disposing of real property or an interest in real property; the purchase of public supplies or equipment included in the real estate transaction; and construction projects.

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This exemption does not apply to the documents listed above once the decision is made to proceed with the lease, acquisition or disposal of real property or an interest in real property, the purchase of public supplies, or a construction project.

23. Library Records - disclosure of library and archive circulation and order records of an identifiable individual or groups of individuals.
24. Library/Museum Materials - disclosure of library archived and museum materials or valuable or rare book collections or documents contributed by gift, grant, bequest or devise, to the extent of any limitations imposed by the donor as a condition of the contribution.
25. Archeological Site/Endangered Species - disclosure of a record identifying the location of an archeological site or an endangered or threatened plant or animal species if not already known to the general public.
26. Pre-Contract Award Documents - disclosure of a proposal pertaining to district procurement or disposal of supplies, service or construction prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offerer requested in an invitation for bid or request for proposals to demonstrate the bidder's or offerer's economic capability; or the identity of members, notes and other records of district proposal evaluation committees established under law relating to competitive sealed proposals.
27. Insurance Communications - disclosure of a record or information relating to a communication between the district and its insurance carrier, administrative service organization or risk management office.

This exemption does not apply to a contract with an insurance carrier, administrative service organization or risk management office, or to financial records relating to the provision of insurance.
28. Social Services - disclosure of a record or information identifying an individual who applies for or receives social services, the type of social services received by an individual, an individual's application to receive social services, or eligibility to receive social services.
29. General Assembly Correspondence - disclosure of correspondence between an individual and member of the General Assembly and records accompanying the correspondence that would identify an individual requesting assistance or constituent services, except for correspondence between a member of the General Assembly and a principal or lobbyist under law.
30. Minors - disclosure of a record identifying the name, home address or date of birth of a child seventeen (17) years of age or younger.

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Financial Records

The listed exemptions do not apply to financial records, except that the Open Records Officer shall redact the portions of a financial record protected under exemptions 1, 2, 3, 4, 5, 6, 16 or 17.

Aggregated Data

The listed exemptions do not apply to aggregated data maintained or received by the district, except for data protected under exemptions 1, 2, 3, 4 or 5.

Law Enforcement Activity

The Open Records Officer will not disclose the identity of an individual performing an undercover or covert law enforcement activity.

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801-AR-1. DISCLOSURE/PRODUCTION OF CERTAIN RECORDS

The Open Records Officer will respond as promptly as possible under the circumstances to a request for access to a public record.

The Open Records Officer will forward copies of the district's written responses to records requests to the Superintendent.

Extension Of Time

Upon receipt of a written request for access, the Open Records Officer will determine if any one (1) of the following applies:

1. Redaction - the request for access requires redaction of a record.
2. Retrieval Time/Remote Storage - the request for access requires retrieval of a record stored in a remote location.
3. Staffing Limitations - a timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations.
4. Legal Review - a legal review is necessary to determine whether the requested record is a public record subject to access.
5. Lack of Policy Compliance - the requester has not complied with the Board policy governing access to public records.
6. Failure to Pay Fees - the requester refuses to pay applicable, established fees.
7. Nature of Request - the extent or nature of the request precludes a response within the required time period.

If the Open Records Officer determines that an extension of time is required to respond to a records request, the requester will be notified in writing, in accordance with law and Board policy.

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Certified Copies

If the Open Records Officer grants a request for access to a record and the requester requests a certified copy of the record for the purpose of legally verifying the public record, the Open Records Officer will provide a certified copy upon payment of the applicable, established fees by the requester.

District Does Not Possess Record

A request for a public record that the district does not possess but is possessed by a third party with whom the district has contracted to perform a governmental function and which relates directly to that governmental function must be submitted to the district's Open Records Officer.

If the Open Records Officer determines that the requested record is subject to public access, the Open Records Officer will respond and grant access in accordance with law, Board policy and administrative regulations.

The requester will pay the established duplication fee.

If the third party that possessed the requested public record duplicated the record in response to the request, the Open Records Officer will remit the fee to the third party.

The third party is not required to provide access to any other of its records.

Transcripts Of Administrative Proceedings

Prior to an adjudication becoming final, binding and nonappealable, a transcript of an administrative proceeding will be provided to a requester by the proceeding's stenographer.

To request access to a pre-final adjudication transcript possessed by a stenographer that is subject to disclosure, the requester must directly contact the stenographer and pay the fees assessed by the stenographer.

After an adjudication becomes final, binding and nonappealable, a transcript of an administrative proceeding will be provided to a requester, and the established duplication fee will be charged.

Trade Secrets/Confidential Proprietary Information

When a third party provides a record to the district and includes a written statement signed by its representative that the record contains a trade secret or confidential proprietary information, the Open Records Officer will notify that third party of a request for access to that record.

Trade secret is defined as information, including a formula; drawing; pattern; compilation such as a customer list; program; device; method; technique; or process that derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its

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disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The term includes data processing software obtained by the district under a licensing agreement prohibiting disclosure.

Confidential proprietary information is defined as commercial or financial information that is privileged or confidential and the disclosure of which would cause substantial harm to the competitive position of the individual that submitted the information.

The Open Records Officer will provide notice within five (5) business days of receipt of the request. The third party will have five (5) business days from receipt of the Open Records Officer's notice to provide input on the release of the requested record.

The Open Records Officer will provide access to the record or will deny the request for access within ten (10) business days of providing notice to the third party and will notify the third party of the Open Records Officer's decision.

Computer Access

The Open Records Officer will not grant requests for access to the district's or its employees' computers.

Discretionary Access

The Open Records Officer may exercise discretion and make an otherwise exempt record accessible in response to a request.

The exempted record will be made accessible for access and duplication, in accordance with law and Board policy, if all of the following apply:

1. Disclosure of the record is not prohibited by federal or state law or regulation, or by judicial order or decree.
2. The record is not protected by privilege, to include the attorney-work product doctrine; attorney-client privilege; doctor-patient privilege; speech and debate privilege; or other privilege recognized by a relevant court.
3. The Superintendent determines that the public interest favoring access outweighs any individual, district or public interest that may favor restriction of access.

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801-AR-2. FEES FOR PUBLIC RECORDS REQUESTS

NOTE TO PNN SUBSCRIBERS: EACH SCHOOL DISTRICT SHOULD RESEARCH, DETERMINE AND ESTABLISH A SET FEE FOR EACH OF THE CATEGORIES BELOW, BASED ON THE SPECIFIED LIMITATIONS FOR EACH. THE SPECIFIC FEE YOUR DISTRICT WILL CHARGE FOR EACH FUNCTION SHOULD BE LISTED AND MADE AVAILABLE AS A LIST OF FEES TO ALL REQUESTERS OF ACCESS TO A PUBLIC RECORD.

REMINDER: THE STATE'S OFFICE OF OPEN RECORDS WILL PROVIDE INFORMATION REGARDING APPROPRIATE FEES AND WILL CONDUCT A BIENNIAL REVIEW OF FEES CHARGED BY SCHOOL DISTRICTS.

The district will not charge a fee for the Open Records Officer's review of a record to determine if the requested record is a public record subject to access under law, Board policy and administrative regulations.

The Open Records Officer will ensure that the district establishes, maintains and disseminates a current list of reasonable fees that requesters must pay in order to receive access to a requested record.

The district's established list of reasonable fees applicable to records requests will comply with the following restrictions:

1. Postage – fees will not exceed the actual mailing cost.
2. Duplication – fees for photocopying, printing from electronic media or microfilm, copying onto electronic media, transmission by facsimile or other electronic means, and other methods of duplication.

Duplication fees will be established and reviewed biennially by the Office of Open Records.

Duplication fees will be charged for a request by an individual employed by or connected with a newspaper or magazine of general circulation, weekly publication, press association, or radio or television station when the purpose of the request is obtaining information for publication or broadcast, and for a request by a nonprofit organization for the conduct of educational research.

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3. Complex and Extensive Data Sets – fees for copying based on the reasonable market value of the same or closely related sets and include geographic information systems and integrated property assessment lists.

These fees do not apply to a request by an individual employed by or connected with a newspaper or magazine of general circulation, weekly publication, press association, or radio or television station when the purpose of the request is obtaining information for publication or broadcast, and for a request by a nonprofit organization for the conduct of educational research.

4. Certification – fees for official certification of copies if the certification is for the purpose of legally verifying a public record and is requested by the requester.
5. Conversion to Paper – duplication fees for a record maintained only electronically or in other nonpaper media will be limited to the lesser of either the fee for duplication on paper or in the original media, unless the requester specifically requests that the record be duplicated in the more expensive medium.
6. Enhanced Electronic Access – fees for providing enhanced electronic access, but only to the extent that the enhanced electronic access is in addition to making the records accessible for inspection and duplication by a requester.

These fees may be a flat-rate fee, a subscription fee for a period of time, per-transaction fee, a fee based on the cumulative time of system access, any other reasonable method, or a combination of these.

These fees must be reasonable; may not be established with the intent or effect of excluding individuals from access to records or their duplicates or of creating a profit for the district; and must be approved by the Office of Open Records.

Except as provided by law, no other fees may be imposed unless the district necessarily incurs costs for complying with a request for a public record, and then such fees must be reasonable.