



Education for Change Public Schools

Public Records Requests – Public Records Act Compliant

There is a strong public policy in California for disclosure of public records. In fact, the voters of California in November 2004 passed Proposition 59, which amended the California Constitution to include the following provision: “The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.” Const., Art. 1, section 3(b). California law already provides for public access to writings of public officials and agencies through the Public Records Act in the Government Code.

This policy reflects the legal requirements for disclosing records to the public under California’s Public Records Act. There has been considerable debate as to the applicability of the Public Records Act to charter schools. Though CSDC does not believe that the Public Records Act applies to charter schools, many disagree. Therefore, a school may wish to act conservatively and adopt a policy in compliance with the Public Records Act. Additionally, a school may be required to follow the Public Records Act by virtue of their charter or operating agreement (or memorandum of understanding) with their charter granting agency. If a public agency is found to have violated the Public Records Act, the party requesting records may bring suit in superior court requesting the court to order disclosure of the withheld records. If the party requesting records prevails, he/she will be awarded court costs and attorney’s fees. There do not appear to be any civil penalties or criminal sanctions.

I. Public Records

A. Public Records Defined

Public records are defined very broadly. Basically, a public record is any “writing” containing information relating to the conduct of the school’s business that is prepared, owned, used or retained by the school regardless of physical form or characteristics. A writing is defined to include every conceivable means of recording upon any tangible thing any form of communication (e.g., printed, electronic data file, e-mail message, etc.). The Public Records Act also provides for a list of exceptions from the definition of public record. These exceptions are narrowly construed in light of the strong public policy in favor of disclosure of public records.

Education for Change Public Schools provides the public with access to its public records in accordance with legal requirements. Public records are those writings containing information relating to the conduct of the EFC’s business that are prepared, owned, used or retained by EFC regardless of physical form or characteristics. Certain public records, however, are exempt from disclosure by express provision of law. These records will not be provided to the public. EFC may not deny disclosure of records based on the purpose for which the record is being requested.

B. Records Exempt from Disclosure

Some of the records that are exempt from disclosure include the following categories. This is not an exhaustive list.

Ø Preliminary drafts, notes or inter/intra-School memoranda that are not retained by the School in the ordinary course of business; **[Note: This exemption only applies if the public interest in withholding the records clearly outweighs the public interest in disclosure.]**

Ø Records pertaining to pending litigation to which the School is a party or to claims made pursuant to the Tort Claims Act (if applicable), until the pending litigation nor claim has been finally adjudicated or otherwise settled. **[Note: This exemption is valid until the litigation or claim is finally adjudicated or settled. In addition, charter schools that are operated by or organized as a nonprofit corporation cannot utilize the protections of the Tort Claims Act.]**

Ø Personnel, medical, student records, or similar files. **[Note: This exemption applies to files, the disclosure of which would constitute an unwarranted invasion of personal privacy. As mentioned previously, however, this exemption is narrowly construed and simply because a document is located in an employee’s personnel file, does not necessarily make it exempt. For example, employment**

contracts and specific salaries for public employees are not exempt. Additionally, it has been held that records of a complaint against a public employee and the resulting disciplinary investigation were not exempt because the individual's privacy rights were outweighed by the public's right to know an allegation of wrongdoing, as long as there is reasonable cause to believe the complaint is well founded. On the other hand, it has been found that performance evaluations, results of examinations and performance goals are part of a personnel file exempt from disclosure. Finally, if your school receives federal funding and is required to follow the Federal Educational Rights and Privacy Act (FERPA) to protect disclosure of student information, ensure that no student records are disclosed in violation of that Act.]

Ø The personal email addresses of all employees of a public agency;

Ø Test questions, scoring keys and other examination data used to administer an examination for employment or academic examination, unless specifically authorized by law. **[Note: If the Governor (or designee) or a Member of the Legislature requests, test questions or materials provided by the CA Department of Education and administered as part of a statewide testing program of pupils enrolled in public schools shall be provided to the requester. In this case, the requester may not take physical possession of the questions or materials, but may view the questions or materials at a location selected by the School.]**

Ø The content of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the School relative to the acquisition of property, until all of the property has been acquired.

Ø Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege. **[Note: This exemption applies to protect, among other things, records that would fall within the Attorney-Client Privilege found in the Evidence Code.]**

Ø A document prepared by or for EFC that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the Schools operations and that is for distribution or consideration in a closed session.

Ø Trade secrets.

Ø Computer software developed by EFC.

Ø Identification numbers, alphanumeric characters or other unique identifying codes that EFC uses to identify a vendor or contractor, or an affiliate of a vendor or contractor, unless the identifying code number, alphanumeric character or other unique identifying code is used in a public bidding or an audit involving EFC.

[Note: The bullet below is the exemption to use in cases that do not fit into the exemptions by their terms, but are similar in nature, and protection of the privacy interest outweighs the public interest served by disclosure.]

Ø Records where, on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. **[Note: This is the so-called “catchall” exemption. Agencies have successfully argued that records reflecting the deliberative process, exposing an agencies decision making process, are exempt from disclosure under the catchall exemption.]**

EFC may, in its discretion and as permitted by law, waive the applicable exemption to the records. In this case, the disclosure constitutes a waiver for all requesters of that public record and will be open to inspection by all requesters.

II. Process for Requesting Public Records

A. Requests for Public Records

Any person wishing to inspect the School’s public records shall make the request, preferably in writing, to Larissa Adam at ladam@efcps.net, Education for Change, 333 Hegenberger Rd, Suite 600, Oakland, CA 94621.

[Note: Courts have determined that the Public Records Act does not require the request to be in writing.] The request must reasonably describe an identifiable public record(s) and must be specific and focused.

To the extent reasonable under the circumstances, the School will assist the requester to make a focused and effective request by:

Ø Assisting the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

Ø Describing the information technology and physical location in which the records exist.

Ø Providing suggestions for overcoming any practical basis for denying access to the records or information sought.

If the School is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record(s), the School will not provide further assistance to the requester.

B. Response to Public Records Request

The **[insert title of individual responsible for responding]** will, within 10 days^[1] of receipt of the request, provide a written response to the requester of public records. The written response shall contain the following information: **[Note: The response need not be in writing, unless the request was in writing and the response denies a request, in whole or in part. However, it is good practice to respond in writing to each public record request and this policy is drafted to reflect this.]**

Ø Notice informing the requester whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the School and the reasons for the determination.

Ø If the School denies any request for records, in whole or in part, and the request was in writing, the notification of denial will set forth the names and titles or positions of each person responsible for the denial. **[Note: If the School determines that records are exempt or on the facts of the particular case, the catchall exemption applies, the School has the burden of justifying withholding of the records.]**

Ø The date and time when the records will be made available. **[Note: Public records are open to inspection at all times during the office hours of the School. Thus, the School cannot limit the times when the inspection may take place, except to the extent necessary to gather the documents.]**

Ø If the request identifies information which is contained in both electronic format and hard copy, the notice may inform the requester that the information is available in either format. **[Note: The School may not make records available only in electronic format.]**

Ø If the requester seeks copies of the records, the School may identify a fee covering the direct costs of duplication. **[Note: The permissible fee has been determined to include only the direct costs of duplication, which includes the cost of running the copy machine, and conceivably also the expense of**

the person operating it. Direct cost does not include the ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted. Additionally, if requested, an exact copy shall be provided unless impracticable to do so.]

Ø If the requester seeks copies in electronic format, the School may charge the requester the direct cost of producing a copy of the record in that format. If, in order to comply with these requirements relating to electronic formatted records described below, the School is required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals or the request would require data compilation, extraction or programming to produce the record, the School may charge the requester the cost to construct a record, the cost of programming and computer services necessary to produce the record.

Ø If the School maintains an Internet Website, Webpage or Internet Web Portal, in which the School describes or titles as “open data,” and the School voluntarily posts a public record on that Internet Resource, the School shall post the public record in an open format that meets requirements identified in Government Code § 6253.10.

Ø The School may comply with the Public Records Act by posting any public record on its Internet Website, and in response to a request for a public record posted on the Website, direct a member of the public to the location on the Website where the public record is posted. If, however, the member of the public requests a copy of the public record due to the inability to access or reproduce the public record from the Website, the School shall promptly provide a copy of the public record in accordance with this policy.

III. Records Inspections or Copies

Time and Place of Inspection: A person who has made a public records request may inspect the records after the date and time identified in the response to the request. Generally, records inspections may take place at **the individual school sites** during office hours of the School, which are **from 8-4pm Monday-Friday during the school year**. Otherwise, contact Education for Change Home Office at 333 Hegenberger Rd, Suite 600, Oakland, CA 94621. **[Note: The School may not adopt rules that limit the hours that records are open for viewing and inspection.]**

Electronic Formatted Records: If the School has information that constitutes an identifiable public record not exempt from disclosure that is in an electronic format, and it has been requested in an electronic format, the School will make that information available in an electronic format. The School will make the information available for inspection in any electronic format in which it holds the information. If the requested format is one that the School uses to create copies for its own use or for provision to other agencies, the School will provide a copy of the electronic record. The School will not, however, provide electronic records in the electronic form in which it is held by the School if its release jeopardizes or compromises the security or integrity of the original record or of any proprietary software in which it is maintained.

If the School no longer has the record in electronic format, the School will not reconstruct the record in electronic format.

Partial Disclosure: If the requested records may only partially be disclosed because some are exempt from disclosure, the reasonably segregable portion of the record(s) will be made available for inspection.

[1] In unusual circumstances, the 10 day time limit may be extended by written notice by the **[insert the title of the head of the School/nonprofit organization operating the School]** to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. In no event will the extension exceed 14 days. As used in this policy, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request: 1) The need to search for and collect the records from field facilities or other establishments that are separate from the office processing the request; 2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; 3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the School having substantial subject matter interest therein; or 4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.