

Pennsbury School District Administrative Procedure

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| Effective Date 02/27/13 | Supersedes Index No. 801.1R1 of 12/10/12 | Index No. 801.1R2 |
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Title: Public Records

Purpose: This procedure establishes the specifics related to implementing Board Policy 801.1 titled “Public Records.”

Attachments: Memo titled “Public Access to School District Records Which Qualify as Public Records under State Law.”

**Responsible
Administrator:** Business Administrator

Kevin J. McHugh, Ed.D.
District Superintendent

Pennsbury School District

Administrative Procedure 801.1

Public Access to School District Records Which Qualify as Public Records Under State Law

Definitions:

Financial record - any account, voucher or contract dealing with the receipt or disbursement of funds or acquisition, use or disposal of services, supplies, materials, equipment or property; or the salary or other payments or expenses paid to an officer or employee, including the individual's name and title; and a financial audit report, excluding the audit's underlying work papers.

Public record - a record, including a financial record that is not protected by a defined privilege or is not exempt from being disclosed under one of the exemptions in Pennsylvania's Right-to-Know Law or under other federal or state law or regulation, or judicial decree or order.

Record - information, regardless of physical form or characteristics, that documents a School District transaction or activity and is created, received or retained pursuant to law or in connection with a district transaction, business or activity, including: a document; paper; letter; map; book; tape; photograph; film or sound recording; information stored or maintained electronically; and a data processed or image-processed document.

Posting

School District Web site shall include:

1. Contact information for the Open Records Officer.
2. Contact information for the state's Office of Open Records or other applicable appeals officer.
3. The form to be used to file a request, which is the same as the Right-to-Know Uniform Request Form developed by the state Office of Open Records and posted on its web site.
4. Board policy, administrative regulations and procedures governing requests for access to the School District's public records.

Open Records Officer shall:

1. Receive written requests for access to records submitted to the School District.

2. Review and respond to written requests in accordance with law, School Board policy and administrative regulations.
3. Direct requests to other appropriate individuals in the School District or in another agency.
4. Track the School District's progress in responding to requests.
5. Issue interim and final responses to submitted requests.
6. Maintain a log of all record requests and their disposition.
7. Ensure School District staff are trained to perform assigned job functions relative to requests for access to records.

Upon receiving a request for access to a record, the Open Records Officer shall

1. Note the date of receipt on the written request.
2. Compute and note on the written request the day on which the five-day period for response will expire.
3. Maintain an electronic or paper copy of the written request, including all documents submitted with the request, until the request has been fulfilled.
4. If the written request is denied, maintain the written request for 30 days or, if an appeal is filed, until a final determination is issued or the appeal is deemed denied.

Procedure for Requesting Records

A written request for access to a public record shall be submitted on the required form attached hereto as Attachment "A" and addressed to the Open Records Officer.

Written requests may be submitted to the School District in person, by mail, to a designated facsimile machine, and to a designated e-mail address. Any request received by the School District after normal business hours, 4:00 p.m. E.S.T., or on a day when the School District offices are closed shall be deemed received the next day on which the School District offices are open.

Each request must include the following information:

1. Identification or description of the requested record, in sufficient detail.
2. Medium in which the record is requested.

3. Name and address of the individual to receive the School District's response.

The School District shall not require an explanation of the reason for the request or the intended use of the requested record, unless otherwise required by law.

Response to Request

School District employees shall be directed to forward requests for access to public records to the Open Records Officer. Requests not properly addressed to the Open Records Officer shall not be deemed received unless and until the Open Records Officer actually receives the written request.

Upon receipt of a written request for access to a record, the Open Records Officer shall determine if the requested record is a public record and if the School District has possession, custody or control of that record.

The Open Records Officer shall respond as promptly as possible under the existing circumstances, and the initial response time shall not exceed five business days from the date the written request is received by the Open Records Officer.

The initial response shall grant access to the requested record, deny access to the requested record, partially grant and partially deny access to the requested record, or notify the requester of the need for an extension of time to fully respond.

Normally, records are available at the School District from 8:00 a.m. to noon and from 1:00 p.m. and 4:00 p.m. Monday through Friday each week except for certain holidays and when offices are closed for emergencies.

The Open Records Officer shall typically respond to the written request within five business days but in no event shall the time for response exceed the time limits of the Right-to Know Act.

Extension of Time

If the Open Records Officer determines that an extension of time is required to respond to a request, in accordance with the factors stated in law, written notice shall be sent within five business days of receipt of request. The notice shall indicate that the request for access is being reviewed, the reason that the review requires an extension, a reasonable date when the response is expected, and an estimate of applicable fees owed when the record becomes available.

Up to a 30 day extension for one of the listed reasons does not require the consent of the requester. If the response is not given by the specified date, it shall be deemed denied on the day following that date.

A requester may consent in writing to an extension that exceeds 30 days, in which case the request shall be deemed denied on the day following the date specified in the notice if the Open Records Officer has not provided a response by that date.

Granting Of Request

If the Open Records Officer determines that the request will be granted, the response shall inform the requester that access is granted and either include information on the regular business hours of the administration office, provide electronic access, or state where the requester may go to inspect the records or information electronically at a publicly accessible site. The response shall include a copy of the fee schedule in effect, a statement that all applicable fees shall be paid in order to receive access to the record requested and the medium in which the records will be provided.

Prepayment of an estimate of fees is required if access to the records is expected to cost in excess of \$100.00.

The Open Records Officer may respond to a records request by notifying the requester that the record is available through publicly accessible electronic means or that the district shall provide access to inspect the record electronically. If the requester, within 30 days following receipt of the School District's notice, submits a written request to have the record converted to paper, the district shall provide access in printed form within five days of receipt of the request for conversion to paper.

Denial of Request

The Open Records Officer may deny a request for access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the district.

The Open Records Officer may deny a request for access to a record when timely access is not possible due to a disaster, or when access may cause physical damage or irreparable harm to the record. To the extent possible, a record's contents shall be made accessible even when the record is physically unavailable.

Information that is not subject to access and is redacted from a public record shall be deemed a denial.

If the Open Records Officer responds to a requester that a copy of the requested record is available for delivery at the administration office and the requester does not retrieve the

record within 60 days of the School District's response, the School District shall dispose of the copy and retain any fees paid to date.

If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the state's Office of Open Records within 15 business days of the mailing date of the Open Records Officer's response or deemed denial.

If the Open Records Officer denies a request for access to a record, whether in whole or in part, a written response shall be sent within five business days of receipt of the request. The response denying the request shall include the following:

1. Description of the record requested.
2. Specific reasons for denial, including a citation of supporting legal authority.
3. Name, title, business address, business telephone number, and signature of the Open Records Officer on whose authority the denial is issued.
4. Date of the response.
5. Procedure for the requester to appeal a denial of access.

Documents Not Qualifying As Public Records:

Documents will not be considered public records if they fall outside the definition of "public record" under the Pennsylvania Right to Know Law or meet one of the exceptions for public records contained within the Law. Documents that do not qualify as public records include the following:

- Internal pre-decisional deliberations of administrators, employees and School Board members
 - unless presented to a quorum for deliberation at a public meeting.
 - Includes real estate appraisals until decision made to proceed with lease, sale or acquisition of property.
- Draft minutes of meetings.
- Executive Session minutes or record of discussion.
- Bid proposals
- Communication with insurance carriers
- Privileged communications:
 - Communications with School District Solicitor or other attorneys
 - Doctor-patient communications; and
 - Speech and debate privilege – applicable to legislative functions
- Records which, if disclosed, would
 - result in loss of Federal or State funds;
 - likely lead to physical harm or personal security of a person;

- jeopardize safety of the public, a building, infrastructure, information storage system, or resource; or
- jeopardize computer security.
- Records of child (17 or under):
- Records of individuals
 - confidential personal health information;
 - applications for social services; and
 - confidential personal information such as social security number, driver's license, financial information, email address and personal phone numbers.
- Records of employees:
 - Reference letters and written criticisms
 - Employment application (if not hired);
 - Employee assistance program information;
 - Grievances and complaints of discrimination
 - Discipline, demotion and discharge (except for final action of discharge or discipline)
 - Academic transcript
 - NOTE: Other confidentiality restrictions may apply to employee records under other laws.
- Certain records relating to criminal and non-criminal investigations
- Transcripts and exhibits of arbitration hearings (final decision is public however).
- Drafts of policies, resolutions or administrative regulations.
- Trade secrets or other confidential proprietary information.
- Personal notes and working papers of an individual, includes message slips.

Third Parties

A public record that the School District does not possess but is possessed by a third party with whom the School District has contracted to perform a governmental function and which directly relates to that governmental function shall be considered a public record of the School District. When the School District contracts with such a third party, the School District shall require the contractor to agree in writing to comply with requests for such records and to provide the School District with the requested record in a timely manner to allow the School District to comply with law.

When the School District produces a record that is not a public record in response to a request, the Open Records Officer shall notify any third party that provided the record to the School District, the person that is the subject of the record, and the requester.

The Open Records Officer shall notify a third party of a record request if the requested record contains a trade secret or confidential proprietary information, in accordance with law and administrative regulations.

Fees

Fees for duplication and, where applicable, document retrieval will be charged according to the following fee schedule which shall be periodically updated.

Duplication Costs:

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| Paper copies <i>(A "photocopy" is either a single-sided copy or one side of a double-sided black-and-white copy of a standard 8.5" x 11" page)</i> | \$0.25 per page |
| 8.5" x 14" black-and-white copies | \$0.28 per page |
| Electronic records copied to native media | \$1.00 per CD |
| Electronic records copied to paper | \$0.25 per page |
| Paper only copies scanned and converted to an electronic format (.pdf) | \$0.25 per page |
| Audio tape reproduction | \$5.00 per tape |
| Complex and extensive data sets <i>(for example but not limited to: blue prints, color copies, non-standard sized documents)</i> | Actual cost |

Facsimile Charge:

Actual cost

Certification of a Record:

\$5.00 per record. Please note that certification fees do not include notarization fees.

Postage:

Actual cost

Parties incurring any of the above fees will be invoiced by Pennsbury School District. Fees totaling less than \$1.00 will be waived. Fees estimated at \$100.00 or greater must be prepaid before media or copy requests are prepared. However, all fees greater than \$10.00 should be collected prior to releasing the requested media or copies to the requestor.



**PENNSBURY SCHOOL DISTRICT
RIGHT-TO-KNOW REQUEST FORM**

DATE REQUESTED: _____

REQUEST SUBMITTED BY: (circle one) E-MAIL U.S. MAIL FAX IN-PERSON

NAME OF REQUESTOR: _____

STREET ADDRESS: _____

CITY/STATE/COUNTY: (Required) _____

TELEPHONE: (Optional) _____

RECORDS REQUESTED:

**Provide as much specific detail as possible so the agency can identify the information.*

DO YOU WANT COPIES? (circle one) YES or NO

DO YOU WANT TO INSPECT THE RECORDS? (circle one) YES or NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? (circle one) YES or NO

RIGHT TO KNOW OFFICER: Dan Rodgers, Business Administrator
134 Yardley Avenue, Fallsington, PA 19054
Fax: (215) 736-3010
e-mail: drodgers@pennsbury.k12.pa.us

FOR OFFICE USE ONLY DATE RECEIVED BY THE AGENCY: _____

AGENCY FIVE (5)-DAY RESPONSE DUE: _____

Section 1307. Fee limitations.

- (a) Postage. — Fees for postage may not exceed the actual cost of mailing.
- (b) Duplication. —
 - (1) Fees for duplication by photocopying, printing from electronic media or microfilm, copying onto electronic media, transmission by facsimile or other electronic means and other means of duplication shall be established:
 - (i) by the Office of Open Records, for Commonwealth agencies and local agencies;
 - (ii) by each judicial agency; and
 - (iii) by each legislative agency.
 - (2) The fees must be reasonable and based on prevailing fees for comparable duplication services provided by local business entities.
 - (3) Fees for local agencies may reflect regional price differences.
 - (4) The following apply to complex and extensive data sets, including geographic information systems or integrated property assessment lists.
 - (i) Fees for copying may be based on the reasonable market value of the same or closely related data sets.
 - (ii) Subparagraph (i) shall not apply to:
 - (A) a request by an individual employed by or connected with a newspaper or magazine of general circulation, weekly newspaper publication, press association or radio or television station, for the purpose of obtaining information for publication or broadcast; or
 - (B) a request by a nonprofit organization for the conduct of educational research.
 - (iii) Information obtained under subparagraph (ii) shall be subject to paragraphs (1), (2) and (3).
 - (c) Certification. — An agency may impose reasonable fees for official certification of copies if the certification is at the behest of the requester and for the purpose of legally verifying the public record.
 - (d) Conversion to paper. — If a record is only maintained electronically or in other nonpaper media, duplication fees shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the original media as provided by subsection (b) unless the requester specifically requests for the record to be duplicated in the more expensive medium.
 - (e) Enhanced electronic access. — If an agency offers enhanced electronic access to records in addition to making the records accessible for inspection and duplication by a requester as required by this act, the agency may establish user fees specifically for the provision of the 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 as required by this act. The user fees for enhanced electronic access may be a flat rate, a subscription fee for a period of time, a per-transaction fee, a fee based on the cumulative time of system access or any other reasonable method and any combination thereof. The user fees for enhanced electronic access must be reasonable, must be approved by the Office of Open Records and may not be established with the intent or effect of excluding persons from access to records or duplicates thereof or of creating profit for the agency.
 - (f) Waiver of fees. — An agency may waive the fees for duplication of a record, including, but not limited to, when:
 - (1) the requester duplicates the record; or
 - (2) the agency deems it is in the public interest to do so.
 - (g) Limitations. — Except as otherwise provided by statute, no other fees may be imposed unless the agency necessarily incurs costs for complying with the request, and such fees must be reasonable. No fee may be imposed for an agency's review of a record to determine whether the record is a public record, legislative record or financial record subject to access in accordance with this act.
 - (h) Prepayment. — Prior to granting a request for access in accordance with this act, an agency may require a requester to prepay an estimate of the fees authorized under this section if the fees required to fulfill the request are expected to exceed \$100.