

PUBLIC RECORDS ACT



WHAT ARE PUBLIC RECORDS?

The term “public records” includes any writing relating to the public’s business if it is prepared, owned, used, or retained by any state or local agency. This definition is purposefully broad to protect the public’s interest in remaining informed regarding the actions of government.

WHAT’S A RECORD?

Includes:

- > Photocopies
- > Handwritten notes
- > Letters
- > Reports
- > Digital storage
- > Electronic mail
- > Facsimiles
- > Other recorded items

EMAIL AND ELECTRONIC MESSAGES

Email contained on agency’s computers constitute “public records” if they relate to conduct of public business. These communications are generally subject to disclosure under the Public Records Act unless they fall under an exemption. Communications in all forms (e.g. texts, tweets, emails, etc.) about District business on private accounts or devices may also be subject to disclosure under the Public Records Act, depending on the content and context of the communications.

School districts may wish to consider adopting policies and implementing best practices around electronic communications by Board members as well as District employees, including use of District provided email addresses, segregating personal communications, and how and whether emails, texts and other electronic communications addressing District business should be stored and maintained.

EXEMPT RECORDS (Partial List)

- > Preliminary drafts and notes not ordinarily retained in the normal course of business, subject to the balancing test for the “catch-all” exemption discussed below
- > Documents prepared for pending litigation
- > Certain personnel and medical files (but not all personnel records are exempt)
- > Certain information from police reports
- > Test questions, scoring keys, and other exam data
- > Records prohibited from disclosure by California or federal law, including attorney-client privileged communications and student records
- > Employee home addresses and telephone numbers

“CATCH-ALL” EXEMPTION

Documents may be withheld if the district determines that 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.

WHO MAY REQUEST A PUBLIC RECORD?

Any “person,” including non-citizens, corporations, partnerships and other businesses, firms and associations. Requests for records must be reasonable and describe an identifiable record.

DEALING WITH UNCLEAR REQUESTS

Districts must “assist” the person making the request so that the request is focused, effective, and reasonably describes an identifiable record or records. This includes 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; describing the information technology and physical location in which the records exist; and providing suggestions for overcoming any practical basis for denying access to the records.

COPIES AND COSTS

If requested, exact copies of the record must be provided if possible. If requested in native format, such as in electronic format, the records must generally be provided in that format. Duplication costs may be charged, but only the actual copying costs. This does not include employee time to locate and assemble the records. In rare instances, the cost of producing electronic records may be recoverable if there are costs related to programming and computer services, and certain other conditions are met, including the necessity of data compilation, extraction or programming.

RESPONSE TIMELINES

Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. This does not equate to a requirement that the records be produced within 10 days. Production should be made in a reasonable time frame.

In unusual circumstances, the 10-day time limit may be extended by written notice to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected. The resulting extension cannot be more than an additional 14 days.

TIPS FOR MANAGING PUBLIC RECORDS ACT REQUESTS

- > **Public Records Generally:** All documents owned, used, retained or prepared for a public agency are public records open to inspection and copying unless there is an applicable exemption.
- > **Respond Promptly:** Agencies should be reasonably prompt in responding to requests (promptness depends on the nature of the request).
- > **Duty to Assist:** Agencies must provide assistance to the person requesting the records. If the request is vague or ambiguous, help the person articulate what records s/he is seeking and explain what records the agency has.
- > **Provide Existing Documents:** A public agency has no duty to create new records, provide a summary of existing records, or create new formats in response to a records request.
- > **Segregating or Redacting Confidential Information:** If a record contains confidential and non-confidential information, agencies should generally provide reasonably segregated or redacted portions of the record.
- > **Exemptions:** Know the exemptions or where to find them.
- > **Consistency:** Maintain a consistent policy or practice when allowing the inspection of records and in charging copy costs.
- > **Access is a Fundamental Right:** Remember, the overall purpose of the Public Records Act is to provide the citizens with the basis to know their government's business.
- > **Know the District's Policies and Practices:** This includes understanding how emails sent to and from Board members regarding District business will be treated.

DISCLAIMER: As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this document does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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