



Communiqué

To: Board members, Superintendents, Treasurers, Business officials, OCSBA members
From: Patrick J. Schmitz, OSBA deputy director of legal services
Re: **Public Records Act Reminder**
Date: June 24, 2004

OSBA has received a number of inquiries about the responsibilities of public schools under the Ohio Public Records Act, Ohio Revised Code Section (RC) 149.43. The purpose of this *Communiqué* is to remind school officials of their duties under the act and related court decisions.

What is a public record?

A public record is any record that is kept by a public office, including school districts. A record is “kept” by a district if it has been created or received by school officials and is maintained as part of the district’s normal operations.

Most school records, including, but not limited to, personnel, budget and salary records, are public records. If some portion of a public record is exempt from disclosure, school officials should offer a redacted copy to the person requesting the record.

There are a few narrow exceptions to this definition. These include medical records, records pertaining to adoption, probation, and parole proceedings, records regarding abortions involving minors, trial preparation records, confidential law enforcement investigatory records, confidential civil rights investigatory records, and records the release of which is prohibited by state or federal law. A school official’s personal notes that are not shared with others also may be excepted from disclosure.

State and federal laws restrict the release of Social Security numbers, student records and the results of criminal background checks. A thorough discussion of student record laws is beyond the scope of this *Communiqué*. Please consult your board’s legal counsel or the OSBA legal division for additional information.

Districts may not exempt records from the act through the provisions of a collective bargaining agreement or an agreement settling a lawsuit.

What are the basic duties of school officials under the act?

The Act provides that “all public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours ... upon request, a public office or person responsible for public records shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, public offices shall maintain public records in a manner that they can be made available for inspection in accordance with this division.”

The responsibility to prepare and make public records available “promptly” means that school officials generally should respond to requests almost immediately. The duty to make copies of records available “within a reasonable period of time” means without undue delay. If records can be made available immediately, school officials should do so. If records can be copied quickly, this should be done (*State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311).

Is a record public if a search consultant or legal counsel maintains it?

Generally, yes. If a third party, including legal counsel, maintains an original record on behalf of a school district, it still is public. The district remains obligated to promptly make the record available for inspection and provide copies within a reasonable time.

Conversely, the act does not entitle persons to take public records off-site for inspection or copying. Removal of public records from district property may violate the act and other provisions of state law.

Are there any limits on who may make a public records request?

No. The act expressly states that “any person” may make a request. A person has the right to request public records regardless of whether the person is a parent, resident of the school district, United States citizen or member of the media.

Can school districts require a person requesting public records to complete a form?

No. Nothing in the act conditions a person’s right to request public records upon the completion of a form. School officials may ask persons to fill out record request forms, but they cannot be required to do so. Persons also may not be obligated to state their reasons for requesting records.

School officials may prepare their own log of public record requests. They also may provide a cover letter with copies of records that specifically enumerates what has been requested and provided. This may help a district document its compliance with the act.

Can a person ask that copies of public records be provided in a particular format?

Yes. The act provides that upon request, school officials shall permit a person seeking records to obtain them “upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record.”

How much can school districts charge for copies of public records?

The act provides that copies shall be made available “at cost.” This means the actual cost of duplication. School districts cannot charge for labor costs associated with making copies or build other overhead into what is charged. For example, if it costs a district five cents per page to make copies, that is the cost that may be assessed.

Can a person request that copies of public records be sent by mail?

Yes. The act provides that school officials “shall transmit a copy of a public record to any person by United States mail within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage and other supplies used in the mailing.”

Are there limits on how many public record requests a person may make?

Generally, no. However, a board of education may adopt a policy limiting the number of records sent by mail to 10 per month, unless the person requesting the record certifies in writing that the person does not intend to use or forward the requested records or the information contained in them for commercial purposes. Media requests are not considered to be for commercial purposes.

Does the act require school districts to create records in response to a request?

No. School districts are not obligated to provide records that do not exist. In one instance, a district was found not to be in violation of the Act for conducting a paperless superintendent search. The district did not receive résumés, applications or other records during the search. As a result, the Ohio Supreme Court held that the district had nothing to disclose (*State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Information Network, Inc. v. Cincinnati Bd. of Edn.*, 99 Ohio St.3d 6, 2003-Ohio-2260).

It is important to note this case is extraordinary because the district took somewhat unusual steps to avoid creating public records.

What are the consequences of violating the act?

Any person who claims a denial of the opportunity to inspect or receive a copy of a public record may file a mandamus action in state court to obtain a judgment ordering the school district to make it available. A court awarding a writ of mandamus may order a district or school officials to pay the attorney's fees of the person seeking the record. This type of litigation also can be a source of significant negative publicity.

For a copy of the Ohio Public Records Act Policy, contact OSBA's policy services at (614) 540-4000 or (800) 589-OSBA.

What resources does OSBA have available to members?

OSBA has two new resources available to members to help them better understand Ohio's public records laws. The first is a Web-based training video that can be found at: www.OSBA-ohio.org. The second is a just-revised *Ohio Public Records Guide*. Please see the flier in this mailing for ordering information.

The information provided in this Communiqué is intended as general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.