



## LEGAL BRIEFS

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by Julia A. Bauer, staff attorney

### Frequently asked questions about public records

After the passing of House Bill 9 in December 2006 and the new policy and training requirements, there have been many questions about public records. Below are some of the most common questions OSBA has received.

#### **Is the treasurer's draft of the board minutes a public record?**

Yes, the draft minutes are a record kept by the school district and do not meet any of the exceptions. The best way to handle this type of request is to stamp the minutes "draft" before releasing them.

#### **Are personnel files public records?**

Generally, yes. There may be information within an employee's personnel file that may need to be redacted, such as an employee's Social Security number or home address. However, most of the information, including the employee's evaluations, salary information and misconduct reports, must be disclosed upon request.

#### **Are electronic mail messages public records?**

If the message would be a public record if printed on paper,

then yes, it also is a public record as an e-mail.

#### **Are electronic mail messages sent to or from my Yahoo or Hotmail accounts public records? What about e-mails sent or received at my work e-mail address?**

To the extent these records meet the definition of a public record, they may be public records. OSBA recommends boards of education issue school district e-mail accounts to all board members to prevent the use of other types of accounts that can cause public records and records retention issues.

#### **Can we give out a parent roster?**

No. Parent names and addresses are not directory information (34 Code of Federal Regulations (CFR) 99.3; Ohio Revised Code (RC) 3319.321). Furthermore, the name and address of the student's parents are considered personally identifiable information under federal law. Schools are required to obtain signed, written consent from the student's parent (or the student if age 18 or over) before releasing personally identifiable student information (34 CFR 99.30).

#### **Are reports of educator misconduct public records?**

The law regarding the placement of misconduct reports perpetuates a myth that the location of a record determines its status with regard to the Ohio Public Records Act. RC 3319.314 requires that a copy of the misconduct report filed with the Ohio Department of Education (ODE) be placed in the employee's personnel file.

After an investigation, if ODE decides not to take action on the individual's license, the report must be taken out of the employee's personnel file and moved to a separate public file. Presumably, if ODE does take some licensure action, the report may remain in the employee's file. The important thing to understand is that a report of educator misconduct is a public record, regardless of where the file is kept.

#### **Are criminal record checks subject to the Ohio Public Records Law?**

No, according to RC 3319.39(D). Not only are they not public records, but they may not be released to any person but the applicant; applicant's representative; board requesting the criminal records check; court;

hearing officer; or other necessary individual involved in a case dealing with the denial of employment to the applicant.

**How long are we required to keep criminal record check reports?**

Ohio law does not set a specific time period for which criminal record checks must be retained, except for bus drivers. Ohio Administrative Code 3301-83-06 requires districts to retain records

of bus drivers' criminal record checks for six years. Guidelines from the auditor and Ohio Historical Society (OHS) do not specify a length of time for retaining criminal record checks, instead recommending they be placed in the employee's personnel file and retained as long as that file is retained. Because districts are required to obtain criminal record checks for employees every five years, it is recommended that the district retain these checks for a

minimum of six years.

For applicants who are not hired, OHS suggests that their records be retained until the end of the fiscal year in which the job was open. Remember, even when placed in an employee's personnel file, criminal record checks are not public records (RC 3319.39(D)).

Additional information on these topics and more can be found in the new OSBA *Ohio School Sunshine Law Guide*, available in November.