

**KDB-R**

**PUBLIC RECORDS – PUBLIC RECORD’S RIGHT TO KNOW  
PROCEDURE**

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1. **INTRODUCTION**

The Superintendent issues this procedure for District 50 public records. This procedure is to provide access to District 50’s records with the intention of complying with the Colorado Open Records Act.

2. **DEFINITIONS**

The following definitions are taken from the Open Records Act and summarize some of the most important aspects of the terms identified.

- A. "Public Records" is defined as all writings made, maintained or kept by District 50 for use in its operations, including the receipt or expenditure of funds, but generally does not include student and employee records. It generally includes correspondence of elected officials. This applies only to records, which are in existence at the time a request is made.
- B. The term "writings" in general means most documents created while performing District business and shall be defined as all books, papers, photographs, tapes, maps, cards, recordings, or documentary materials, regardless of physical form. This includes digitally stored data, including e-mail, computer records, voice mail, optical imaging, but does not include computer software.
- C. The term "work product" is defined as all inter- or intra-agency advisory materials assembled for the benefit of one or more members of the Board of Education. These materials may express an opinion or be deliberative in nature and are communicated for the purpose of assisting such members in reaching a decision in the scope of their authority. It does not include 1) any final version of a document that expresses a final decision by an elected official; 2) a final fiscal or performance audit; 3) a final financial record or report; or 4) materials that constitute work products and are produced and distributed at a public meeting. Board of Education members, with the consent of the Board of Education as a whole, may release part or the entire work product prepared for them.
- D. The "Records Custodian" shall be defined as the administrator, or his designee, in charge of the division or department possessing the records requested.

- E. "Personnel Files" includes the home addresses, telephone numbers, financial information, performance evaluations of licensed and Educational Support Professionals (except for certain aspects of the performance evaluation of the Superintendent – see C.R.S. § 22-9-109) along with other information maintained because of the employer-employee relationship. "Personnel Files" does not include applications of past or current employees (except an applicant who is not a finalist for a position who asks at the time of submission of application materials that they remain confidential), employment agreements, any amount paid or benefit provided incident to termination of employment, or any compensation, including expense allowances and benefits, paid to employees by the School District.

3. **PROCEDURES**  
**Request for Records**

- A. All requests for public records (except those documents produced primarily to be distributed to the public, such as pamphlets, program descriptions, etc.) will be made in writing, using the appropriate form. If the request is made via telephone, the individual making the request will be asked to submit the request in writing.
- B. All non-routine requests for public records, including those for electronic mail, must be forwarded immediately to the Director of Communications and Community Relations for review prior to the response.
- C. District 50 has no obligation to create records in response to a request that are not in existence at the time the request is made. It may, however, choose to do so. If, in response to a specific request, the District has performed a manipulation of data so as to generate a record in a form not used by it, a reasonable fee may be charged to the person making the request. Such fee shall not exceed the actual cost of manipulating the data and generating the record in accordance with the request.

4. **Access to Records**

- A. All public records shall be open for inspection in the office of the records custodian during regular business hours. The records custodian shall, if feasible, reply to any written request while the person waits. If immediate reply cannot be made, the custodian shall set a date and time when the records will be available for inspection.

- B. In compliance with the Open Records Act, any request for public records must be processed within three (3) business days. The administrator in charge of the division or department possessing the records may determine if there are extenuating circumstances for which this timeline cannot be met. If extenuating circumstances do exist within three (3) days of the request a written notice must be given to the requestor that the response will be delayed and the time for reply may be extended up to four (4) business days to a total of seven (7) days from the time of the first request.
- C. If the requested records are in the custody and control of the person to whom the records request is made, but are in active use, in storage, or are otherwise not available at the time an applicant asks to examine them, the custodian will advise the one making the request of that fact. The applicant may request a written statement confirming this.
- D. If application is made to one who is not in possession or control of the requested records, the applicant shall be notified of this as soon as possible (in writing if requested) and told where and to whom to apply for the records, if known.
- E. If requested by the applicant, reasons for denial of access to public records shall be promptly given in writing, citing the law or regulation under which access is denied.
- F. The public may not use either its own or the data processing equipment of District 50 when inspecting or copying public records. The manual or electronic functions necessary to extract, collate, organize, retrieve, or copy the information and data necessary to produce the record or allow for its inspection shall be performed only by District 50 personnel.
- G. When a person has the right to inspect a public record, he/she also has the right to a photocopy of such a record upon the payment of any applicable fees. Generally, the applicant may choose between inspecting the record or receiving a paper copy of the record. In some cases the applicant may not have the option of choosing between a copy of the record and inspection of the record, but shall be required to receive a copy. The custodian shall have the discretion to make a decision about the form in which the information contained in the public record will be provided, taking into account any dangers of record alteration or obliteration, and the efficient operation of the office involved.

- H. The custodian is authorized to provide data verbally with the assurance that it is correct, when in the opinion of the custodian it is necessary to do so.
- I. Public records open to inspection and copying may include the following:  
Board of Education minutes of meetings; resolutions; finalized agreements; financial records, enrollment records, correspondence of Board of Education members (correspondence of members is not open to public inspection where it is: a) “work product”; b) has no demonstrable connection to the exercise of functions required or authorized by law or administrative rule and does not involve the receipt or expenditure of public funds; and c) is a communication from a constituent to a member that clearly implies by its nature or content that the constituent expects that it is confidential or a communication from a member in response to such a communication from a constituent.

## 5. **Limitations on Access to Records**

- A. The Open Records Act governs the circumstances under which the District 50 must or may deny access to public records. The Open Records Act, and federal law in some cases, requires that some records not be disclosed.

The following list includes some of the documents as to which access by members of the general public will be restricted. Generally, the person who is the subject of the record, or the parent/guardian of a minor child who is the subject of the record, shall have access to the record.

1. Student records – are governed by the Federal Family Educational Rights and Privacy Act, Policy JO – Student Records.
2. Litigation files
3. Communications protected by a legal privilege, including the attorney-client privilege.
4. Real estate appraisals made on behalf of District 50 relating to the acquisition of an interest in property, until such time as the title to the property has passed to District 50 and only in such cases, as disclosure would, in the opinion of the records custodian, be contrary to the public interest.

5. Medical, psychological, sociological or scholastic achievement data relating to individuals. Group scholastic achievement data from which individuals cannot be identified shall be open to the public. In the case of these records, either the custodian or the person who is the subject of the record (or where the records relate to a minor student, their parent/guardian) may request a professionally qualified person, who shall be furnished by the custodian, to be present to interpret the records.
6. Personnel files. A personnel file shall not be open for public inspection except by the employee and those employees and members of the Board of Education supervising the employee's work. The custodian of records will be present when an employee reviews his/her file.
7. Performance evaluations of employees and all public records used in preparing the evaluation, except that such documents shall be available to those supervising such employees and certain aspects of the evaluation of the Superintendent may be open to public inspection.
8. Letters of reference relating to prospective employees or those who supply goods or services to District 50.
9. Test questions, scoring keys and other exam data pertaining to the administration of an academic or employment examination where disclosure would be contrary to the public interest.
10. Confidential data of the following types: commercial data, including trade secrets, financial data, geological data, or geophysical data.
11. Copyrighted documents except where such access would fall within "fair use" under the federal copyright law.
12. Records of investigations of alleged misconduct by students or employees.
13. Work product of members of the Board of Education or assembled for such members.

14. Addresses, phone numbers and personal financial information of past or present users of District 50 facilities (except to police officers who show the information is reasonably related to the performance of their duties).
15. Application materials submitted by a prospective employee for a non-classified position who: a) is not a finalist for the position; and b) asks at the time of submission of the materials, that the materials remain confidential. "Finalist" means a candidate for an executive position who is either chosen for an interview or who is still being considered for the position twenty-one (21) days prior to making the appointment, whichever comes first; except that if six (6) or fewer applicants or candidates are competing for the executive position, "finalist" means all applicants or candidates. Letters of reference or medical, psychological, and sociological data concerning any candidate, including a finalist, are not subject to public disclosure.
16. Other information required by either state or federal law or regulation to be held in confidence.
17. Where disclosure would be contrary to the order of a court of competent jurisdiction.

District 50 may be required to disclose the records listed above in response to a valid subpoena or other order of a court of competent jurisdiction.

Where a record contains both confidential data and data that is not confidential, District 50 will make a reasonable effort to delete the confidential data and provide an edited record, providing that it is not an undue burden to do so. Under the Open Records Act, District 50 is not required to create a new record in response to a records request, but only to supply records already in existence.

Assistance in interpreting the extent of disclosure for any of the items referenced in "Limitations on Access to Records" may be obtained through the office of legal counsel.

- A. There may be cases where even though a record might otherwise be available for public inspection, in the opinion of the records custodian, disclosure of its contents would be substantial injury to the public interest. In such cases, and only

with the consent of the Superintendent of Schools, the records custodian may deny access to the public record.

- B. Where the applicant is a party to litigation against District 50 (or its employees where the suit relates to acts or omissions of employees while on the job), or is acting on behalf of such a party, the Colorado Rules of Civil Procedure, and not this procedure, shall apply to requests for public records. If the records custodian is aware that any documents are involved in litigation, the office of legal counsel shall be contacted before proceeding.

### **Computer and E-Mail Records**

- A. Pursuant to Colorado law, in cases involving public records which are the result of computer output other than word processing, District 50 charges a fee which is based on the actual incremental costs of providing electronic services and products together with a reasonable portion of the costs associated with building and maintaining the information system. (See attached fee schedule.) Consistent with federal regulations, no fees may be charged to a parent/guardian or eligible student for searching for or retrieval of student records. Charges may be assessed for the actual copying (as apposed to searching to retrieval) of such documents.

### **6. Fees**

The attached fee schedule establishes the approved fees for production of public records. The records custodian shall have the authority to waive any fee described above where a) a person demonstrates that he/she is indigent; b) the record is being provided to another governmental agency, including a school.

## EXHIBIT

### **PUBLIC RECORDS FEE SCHEDULE**

#### **Non-Computer Data**

The fees to be charged for duplicates of paper documents and for information, which is the product of computer word processing, are as follows:

#### Photocopies:

- 1) Student transcripts where the transcript is located at the school the student attends: FREE: first ten (10) copies by a student during a single school year; copies beyond ten (10) in a single school year: \$5.00 each;
- 2) Student transcripts where the transcript is no longer at the school site: \$5.00
- 3) Student records other than transcripts, when supplied to the student in question or their parent/guardian: 25¢ per page
- 4) Documents other than those identified above, \$1.50 a page unless the person at the site (e.g. school clerk) waives the fee;
- 5) Certified copies: \$3.00 a page
- 6) Duplicating microfilm: 25¢ per frame
- 7) Duplicate video/audio tapes: prices available through Library/ITV Services

#### **Data Resulting from Computer Output**

When a request for public records is made and the records are the result of computer output other than word processing, the employee to whom such request is made shall apply the following fee schedule. Federal regulations state that no fees may be charged to a parent/guardian or eligible student for searching for or retrieval of student records. (All fees are in addition to the costs of photocopying or other duplication.)

\$50.00/Hour, with a minimum charge of one (1) hour.

All fees shall be collected prior to the information being provided. Prior to doing the work, a cost estimate shall be given to the person requesting the information.

#### **Information Concerning Electronically Stored Records**

Because of the resources necessary to respond to a request for electronic records, additional charges apply to request for such records, except where only the output of a word processing program is required. We charge the fees listed on the attached schedule.

LEGAL REF.: C.R.S. § 24-72-201, *et seq.* (Colorado Open Records Act)

Adopted:

Last Revised: February 2012