

## **Public Access to Public Records**

### **I. Purpose**

The Intermediate Unit recognizes the importance of making public records available for review and inspection by members of the public. The Intermediate Unit also recognizes the need to maintain confidentiality of certain Intermediate Unit records as required by law.

The purpose of this policy is to ensure compliance with the Pennsylvania Right to Know Law, 65 P.S. § 66.1 *et seq.* as amended by Act 3 of February 14, 2008; to provide appropriate access to public records; to preserve the integrity of Intermediate Unit records; and to minimize the financial impact to the Intermediate Unit associated with the receipt and processing of public records requests and compliance with statutory obligations. The Intermediate Unit shall make the public records available for inspection and/or duplication in accordance with applicable law and the following guidelines.

### **II. Procedure for Requesting Records**

The Intermediate Unit shall require the presence of a designated Intermediate Unit employee any time public records are examined and inspected, and may charge reasonable fees for the duplication of public records as permitted by law. The Intermediate Unit designates the Assistant to the Executive Director as the Intermediate Unit's Open Records Officer. The Open Records Officer shall be responsible for facilitating compliance with applicable law.

The Open Records Officer may designate certain Intermediate Unit employee(s) to process requests for public records as appropriate. The Open Records Officer shall establish a system for tracking all requests made under this policy in accordance with the requirements set forth under the law.

All requests for public records shall be submitted in writing to the Open Records Officer either in person, by mail, by facsimile or through electronic mail.

All requests under this policy must specifically identify and describe each record requested; include the date of the request, the requester's name, address, telephone number and signature; include a certification that the individual submitting the request is a United States resident; and, if duplication of records is requested, appropriate payment.

The Intermediate Unit shall not be required to create a public record which does not exist, or compile, maintain, format, or organize any information in a manner in which the Intermediate Unit does not currently compile, maintain, format, or organize such information.

The Intermediate Unit shall make records available in the medium requested if the record exists in such medium. Otherwise, the Intermediate Unit shall make the record available in the medium in which it is maintained by the Intermediate Unit. If a record is maintained only in an electronic medium, the Intermediate Unit will make a paper copy of the record available upon request.

The Open Records Officer, or his or her designee, shall respond to requests for public records within five (5) business days from the date of receipt of the written request. If the Intermediate Unit does not respond to the public records request within five (5) business days, the request shall be deemed denied.

The Intermediate Unit's response to a public records request shall be limited to the following:

- (1) Approval of access to or duplication of the public record;
- (2) Request for an extension of time to respond to a request;
- (3) Denial of access to the requested information.

If access to a public record is granted by the Intermediate Unit, the Open Records Officer or his/her designee shall schedule a time for the examination and inspection of the requested records. Normally, records are available in the Executive Director's Office from 8:30 a.m. to 4:00 p.m. Monday through Friday each week except for certain holidays.

The Open Records Officer or a designated employee shall take reasonable measures to protect Intermediate Unit records from possible theft, modification, or destruction. Original Intermediate Unit records shall not be removed from the Intermediate Unit building or from the supervision and control of the Open Records Officer or his/her designee.

The Open Records Officer or his/her designee shall remain present during any period of inspection of records. If the Open Records Officer determines that a request for public records requires further review, the Open Records Officer or his/her designee shall respond in writing and include the reason for the review of the request and the anticipated response date, which shall be within thirty (30) days of the date of the notice of review. If the Open Records Officer does not respond to the request for public records within thirty (30) days thereafter, the request shall be deemed denied. Review of a request for public records shall be limited to situations where:

- (1) Requested records contain both public and nonpublic information, and the Intermediate Unit must redact the nonpublic information in order to grant access to the public information. The redaction of information shall be deemed a denial of the request for such information;
- (2) The request for public records requires retrieval of information from a remote location;
- (3) A timely response cannot be accomplished due to "bona fide" and "specified" staffing limitations;
- (4) A legal review is necessary to determine whether the information requested is a public record as defined by law;
- (5) The requester fails to comply with the Intermediate Unit's policy and procedural requirements regarding access to public records;
- (6) The requester refuses to pay applicable fees associated with the request;
- (7) The extent or nature of the request precludes a response within the required time period.

If it is determined by the Open Records Officer that one of the above listed factors applies to a request and that further review of the request is necessary, the Open Records Officer shall send a

written notice to the requester within five (5) business days of the receipt of the request. The notice shall include a statement notifying the requester that the request requires further review, the reason for the review and a reasonable date when a response is expected to be provided. If the expected date of the response is in excess of thirty (30) days, following the initial five (5) business day period, the request shall be deemed denied unless the requester agrees in writing to an extension of the date of the required response. If the requester agrees to an extension of the response date, the request is deemed denied on the day after the extension expires.

If access to a requested record is denied, the Open Records Officer shall provide written notice to the requesting party, which shall include a description of the record(s) requested, the legal authority supporting the denial, the contact information of the Open Records Officer and the appeal procedure.

If a request is denied or deemed denied, the requester may file an appeal with the Commonwealth's Office of Open Records within fifteen (15) business days of the date of the Intermediate Unit's notice of denial, or within fifteen (15) business days of a deemed denial. Appeals shall state the grounds upon which the requester asserts that the requested information is a public record and shall provide a response to the Intermediate Unit's position for delaying or denying the request.

Within thirty (30) days of the mailing date of the final determination of the appeals officer, the requester or the Intermediate Unit may seek review with the Court of Common Pleas.

### **III. Definitions**

"Financial record" –

- (1) Any account, voucher or contract dealing with:
  - a. The receipt or disbursement of funds by the Intermediate Unit; or
  - b. The Intermediate Unit's acquisition, use or disposal of services, supplies, materials, equipment or property.
- (2) The salary or other payments or expenses paid to an officer or employee of the Intermediate Unit, including the name and title of the officer or employee.
- (3) A financial audit report. The term does not include work papers underlying an audit.

"Public record" – A record, including a financial record of a Commonwealth or local agency that:

- (1) Is not exempt from disclosure under the Right to Know Law;
- (2) Is not exempt from disclosure under any other state or federal law or regulation or judicial order or decree; and
- (3) Is not protected by an applicable privilege.

"Record" – Information, regardless of physical form or characteristics, that document a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes 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.

“Requester” – A legal resident of the United States, or an agency, who requests access to a record.

“Response” – The IU’s notice informing a requester of a granting of access to a record or the IU’s written notice to a requester granting, denying, or partially granting and partially denying access to a requested record.

#### **IV. Records Exempt from Disclosure:**

- (1) Any record, document, material, exhibit, report, memorandum or other paper, that is protected by privilege or the access to or publication of which is prohibited, restricted or forbidden by law, court order or decree; or which would operate to the prejudice or impairment of a person’s reputation or personal security; or result in the loss of Federal funds.
- (2) A record that, if disclosed, would be reasonably likely to jeopardize homeland security or public safety or preparedness or the safety or security of Intermediate Unit property including the Intermediate Unit’s information storage and computer network systems.
- (3) Personal identification information pertaining to employees and students, including Social Security numbers; personal financial information; driver’s license numbers; home, cellular or personal telephone numbers; personal email addresses; employee numbers or other confidential personal identification numbers; marital status; name of spouse, and beneficiary or dependent information; medical, psychological and related records that would disclose personally identifiable health information; and academic transcripts and examination materials.
- (4) Records relating to collective bargaining strategy or contract negotiations.
- (5) Proposals related to the procurement or disposal of supplies, services or construction prior to the award of the contract or the opening and rejection of all bids; or financial information of a bidder or offeror.
- (6) Reports, communications or other items, the publication of which would disclose the initiation, progress or result of an investigation undertaken by the Intermediate Unit in the performance of its official duties.
- (7) Notes and working papers created by an Intermediate Unit official or employee solely for the individual’s personal use.
- (8) Records reflecting internal, predecisional deliberations, including predecisional deliberations relating to budget recommendations, proposed policy and internal strategies, including drafts of resolutions, regulations, policies, and management directives. However, records presented to a quorum of the Board of School Directors for public deliberation at a meeting subject to the Sunshine Act are public records unless otherwise exempt under the Act.
- (9) Draft minutes of the Board of School Directors until the next meeting and minutes of an executive session.
- (10) Trade secrets, confidential proprietary information and unpublished academic materials.

The Intermediate Unit reserves the right to release records that are exempt from disclosure under the Right to Know Law at its discretion to the extent that 1) disclosure is not prohibited by law, regulation or court order or decree; 2) the record is not protected by privilege; and 3) the

Intermediate Unit determines that the public interest in disclosure outweighs the need for maintaining confidentiality.

The determination as to whether requested information is a “public record” or information to which the public may have access will be made by the Open Records Officer in consultation with the Intermediate Unit Solicitor’s office.

**References**

Pennsylvania Right to Know Law, 65 P.S. § 66.1 *et seq.*

Pennsylvania school Code, 24 P.S. § 4-408

Pennsylvania school Code, 24 P.S. § 5-518

Policy Adopted: March, 2009