
AURORA PUBLIC SCHOOLS
Adopted March 1999
Reviewed October 2007
Revised October 2016
Revised December 2019

APS Code: KDB

PUBLIC'S RIGHT TO KNOW/FREEDOM OF INFORMATION

Page 2 of 2

C.R.S. 24-72-205(6)(b) (maximum hourly fee for research and retrieval of public documents on July 1, 2019, and every five-year period thereafter)

CROSS REFS.: BEDA, Notification of School Board Meetings
 BEDG, Minutes
 DAB*, Financial Administration
 EGAEA, Electronic Communication
 GBJ, Personnel Records and Files
 JRA/JRC, Student Records/Release of Information on Students

PUBLIC'S RIGHT TO KNOW/FREEDOM OF INFORMATION

Page 1 of 10

I. INTRODUCTION

The following procedure applies to requests by members of the public, including parents, community members, media organizations and other third parties, for inspection of public records maintained by the district. A person who has the right to inspect a public record also has the right to request to be furnished a copy of the record. Pursuant to policy KDB, the superintendent issues this regulation governing access to public records held by the district. The intent of this regulation is to provide access to the district's records to the extent required by the Colorado Open Records Act. If there is a conflict between the provisions of this regulation and the Open Records Act, the Open Records Act shall control.

II. 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" shall be defined as all writings made, maintained, or kept by the school district for use in the exercise of its functions, including the receipt or expenditure of public funds. It applies only to records that are in existence at the time a request is made. The term does not include most student and employee records. It generally includes correspondence of elected officials.
- B. "Writings" shall be defined as all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics. This includes digitally stored data, including e-mail, computer records, voice mail, optical imaging, etc., but does not include computer software. In general, this definition means that most documents created in the course of performing district business are considered to be public records.
- C. "Work Product" shall be defined as all intra- or interagency advisory or deliberative materials assembled for the benefit of one or more members of the board of education, which materials express an opinion or are deliberative in nature, and are communicated for the purpose of assisting such members in reaching a decision

PUBLIC'S RIGHT TO KNOW/FREEDOM OF INFORMATION

Page 2 of 10

within 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 version of a fiscal or performance audit, (3) a final financial record or report, or (4) materials that would otherwise constitute work product but are produced and distributed in a public meeting. In addition, members of the board of education may, with the consent of the board of education as a whole, release all or any part of work product prepared for them.

- D. "Records Custodian" shall be defined as the administrator in charge of the division, building, or department possessing the records requested, or the designee of such person.
- E. "Personnel Files" means and includes home addresses, telephone numbers, financial information, performance evaluations of certificated employees (except certain aspects of the performance evaluation of the superintendent -- see C.R.S. 22-9-109), and 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 time of submission of application materials that they remain confidential), employment agreements, any amount paid or benefit provided incident to termination of employment, performance ratings of noncertificated employees, or any compensation, including expense allowances and benefits, paid to employees by the school district.

III. PROCEDURES

Process for requesting Records

- A. All requests for public record(s) maintained by the district shall be specific enough to allow the district to efficiently identify the requested record and respond to the request. To clarify and facilitate the processing of a request to inspect and/or obtain copies of records, the district may require that the request be made in writing (except those documents produced primarily to be distributed to the public, such as pamphlets, program descriptions, etc.) will be made in writing, using the form found

PUBLIC'S RIGHT TO KNOW/FREEDOM OF INFORMATION

Page 3 of 10

on exhibit KDB-2-E. If a request is received via the telephone, the one making the request will be asked to submit the request in writing. Exceptions to the written request requirement may be made by the custodian. The District may not require a person to provide any form of identification to request or inspect records, unless the identification is required by law in order to release confidential information.

- B. If the requested public record is in active use, in storage, or otherwise not readily available at the time of the person's request, the person requesting the record shall be informed of that fact. The custodian of records will then make the record available within a reasonable time of the person's request.

A reasonable time shall not exceed three working days, but may be extended by an additional seven working days if certain extenuating circumstances exist, in accordance with state law.

- C. If the person seeking the record requests transmission of the record, the custodian of records shall notify the person once the record is available that it will only be transmitted when the custodian receives payment or makes arrangements for receiving payment for all costs associated with the record transmission and for all other fees lawfully allowed, unless the custodian waives all or any portion of such costs or fees.

Upon receipt of payment of any applicable copy costs and/or other fees or upon making payment arrangements with the person requesting the record, the custodian of records will transmit a copy of the record by United States mail, other delivery service, facsimile or electronic mail. Transmission will occur as soon as practicable but no more than three business days after the district's receipt of payment, or making arrangements to receive such payment.

- D. Inspection of any public record shall take place in an area designated by the district's custodian of records and shall occur in a manner that will not be disruptive to district operations. District employees may be assigned to monitor any inspection of public records. All public records shall be open for inspection in the office of the records

PUBLIC'S RIGHT TO KNOW/FREEDOM OF INFORMATION

Page 4 of 10

custodian during regular business hours. Upon written request of the applicant specifying which documents are being requested, the records custodian shall, if feasible, reply to the 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.

- E. If the district does not have facilities for making a copy of a record that a person has the right to inspect, the person shall be granted access to the record for the purpose of making a copy. The copy shall be made under the supervision of the custodian of records or designee. When practical, the copy shall be made in the place where the record is kept but if it is impractical to do so, the custodian may allow arrangements for the copy to be made at another facility.

District responsibilities

The district has no duty to create a public record that does not already exist.

If the district stores the public record in a digital format, the district must provide a copy of the record in a digital format unless otherwise requested by the requestor, and must transmit the record by electronic mail if possible. Public records stored in a searchable format must be provided in a searchable format and public records stored in a sortable format must be provided in a sortable format, and a digital public record must not be converted into a non-searchable or non-sortable format before transmission. However, public records do not need to be provided in a searchable or sortable format if any of the following exceptions apply:

- a. producing the record in the requested format would violate the terms of a copyright or licensing agreement;
- b. producing the record in the requested format would result in the release of third party proprietary information;
- c. after making reasonable inquiries, the records custodian determines that:
 - (1) it is not technologically or practically feasible to permanently remove information that the district is required or permitted to withhold;
 - (2) it is not technologically or practically feasible to provide a copy of the record in a searchable or sortable format;

PUBLIC'S RIGHT TO KNOW/FREEDOM OF INFORMATION

Page 5 of 10

- (3) producing the record in a searchable or sortable format would require the purchase of software, or the creation of additional programming or functionality in existing software, to remove information the district is required or permitted to withhold.

Access to Records

- A. 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.
- B. The public may not be allowed to directly use either its own or the data processing equipment of the school district in inspecting or copying public records. In every instance, the manual or electronic functions necessary to extract, collate, organize, retrieve, copy or otherwise manipulate the information and data necessary to produce the record or allow for its inspection shall be performed by school district personnel.
- C. Whenever a person has the right to inspect a public record, s/he also has the right to a photocopy of such a record upon the payment of any applicable fee. Generally, the applicant may choose between receiving a paper copy of a record and inspecting the record. In some cases, however, 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 and/or obliteration, and the efficient operation of the office involved.
- D. In most cases, data should not be provided verbally with the assurance that it is correct. However, where in the opinion of the custodian it is necessary to respond verbally, the custodian is authorized to do so.
- E. Some examples of public records open to inspection and copying include:
1. Minutes of meetings of the board of education
 2. Resolutions

PUBLIC'S RIGHT TO KNOW/FREEDOM OF INFORMATION

Page 6 of 10

3. Finalized agreements
4. Financial records
5. Enrollment records
6. Correspondence of members of the board of education. (Correspondence of members is not open to public inspection where it: (a) is "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.

Limitations on Access to Records

- A. The Open Records Act governs the circumstances under which the school district 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. (See also subsection "E" of this section.) In most cases (except, for example, letters of reference), 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 (Student records are governed primarily by the Records - Release of Information on Students, adopted pursuant to this federal law for full details).
2. Litigation files (Also see this section A.3. and C. below).
3. Communications protected by a legal privilege, including the attorney-client privilege.
4. Real estate appraisals made on behalf of the district relating to the acquisition of an interest in property, until such time as title to the property has passed to the district, and only in such cases as where

PUBLIC'S RIGHT TO KNOW/FREEDOM OF INFORMATION

Page 7 of 10

- 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.
 7. Performance evaluations of certificated 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 (see C.R.S. 22-9-109).
 8. Letters of reference relating to prospective employees or those who may supply goods or services to the district.
 9. Test questions, scoring keys, and other exam data pertaining to the administration of an academic or employment examination where disclosure would, in the opinion of the records custodian, 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 (generally applicable only to photocopies and not access).
 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

PUBLIC'S RIGHT TO KNOW/FREEDOM OF INFORMATION

Page 8 of 10

- present users of district 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 nonclassified position who is not a finalist for the position, and 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 21 days prior to making the appointment, whichever comes first; except that, if six 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.

The school district is generally required to disclose the records listed above in response to a subpoena or other order of a court of competent jurisdiction.

Under the Open Records Act, the district is not required to create a new record in response to a records request, but only to supply records already in existence. For this reason, where a record contains both confidential data, and data that is open to public disclosure, ordinarily the district will not delete confidential information and produce the document.

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.

- B. 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 do 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.

PUBLIC'S RIGHT TO KNOW/FREEDOM OF INFORMATION

Page 9 of 10

- C. Where the applicant is a party to litigation against the district (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 regulation, shall apply to requests for public records. (*Martinelli v. District Court in and for the City and County of Denver*, 612 p.2d 1083, 199 Colorado. 163 [1980]). If the records custodian is aware that any documents are involved in litigation, the office of legal counsel shall be contacted before proceeding.

Denial of access and dispute resolution

1. If the district denies a request for access to district records and the person requesting the records asks for a written statement of the grounds for denial, the district shall provide a written statement to the person, citing the law or regulation under which the district denied access.
2. A person denied access to district records may seek a court order compelling disclosure.
3. Before seeking a court order, the person must provide written notice to the records custodian at least 14 days before filing an application in court.
4. During the 14-day period, the records custodian shall meet in person or communicate on the telephone with the person denied access to district records to determine if the dispute may be resolved without court involvement.
5. Any common expense necessary to resolve the dispute shall be apportioned equally between the person requesting the records and the district, unless the district and person agree to a different method of allocating the costs.

COMPUTER AND E-MAIL RECORDS

- A. Pursuant to Colorado law, in cases involving public records, which are the result of

PUBLIC'S RIGHT TO KNOW/FREEDOM OF INFORMATION

Page 10 of 10

computer output other than word processing, the district 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 exhibit KDB-1-E, Public Records Fee Schedule, for the fee schedule for the retrieval of such documents. Consistent with federal regulations, no fees may be charged to a parent/guardian or eligible student for searching for or retrieval of student records. However, charges may be assessed for the actual copying (as opposed to searching and retrieval) of such documents.

IV. FEES

Exhibit KDB-1-E establishes the approved fees for production of public records. The records custodian shall have the authority to waive any fee described in exhibit KDB-1-E where: (a) a person demonstrates that s/he is indigent, (b) the record is being provided to another governmental agency, including a school, (c) the collection of the fee will not result in a net financial gain to the school district when one considers employee time spent in collecting and accounting for the fee, or (d) where imposition of the fee is otherwise unreasonable or unwise under the circumstances.

LEGAL REFS.: Colorado Open Records Act 24-72-201, et seq.
Family Educational Right and Privacy Act, 20 U.S.C. 1232g

CROSS REF.: JRA/JRA, Student Records/Release of Information on Students

PUBLIC RECORDS FEE SCHEDULE

Page 1 of 1

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 attended; **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 each**;
3. Student records other than transcripts, when supplied to the student in question or their parent/guardian: **\$.25/page**;
4. Documents other than those identified above, **\$.25/page**, unless the person at the site (e.g. school clerk) waives the fee;
5. Certified copies: **\$3.00/page**;
6. Duplicating microfilm: **\$.25/frame**;
7. Duplicate video/audio tapes: prices available through Library/TV 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. (All fees *are in addition* to the costs of photocopying or other duplication):

\$33.58/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.

REQUEST FOR PUBLIC RECORDS

Page 1 of 3

This form will assist us in processing your public records request. Clearly defining the records which are sought is critical to a timely and accurate response. Thank you for your assistance.

Person Requesting Records

Name _____

Address _____

Phone _____

Firm you represent (if any): _____

When do you want these records? _____

Do you prefer to have copies of these records, or view them at our offices?
(In some cases, viewing of our records may not be allowed, and photocopies
may be provided instead.)

_____ Copies

_____ View at office

Please identify the documents that you wish to review. Please be as specific
as possible, using a separate page if necessary.

REQUEST FOR PUBLIC RECORDS

Page 2 of 3

Check one:

_____ I am only seeking records which are dated between _____ and _____.

_____ I am seeking all records described, regardless of date.

Note: Unless you specify otherwise, your request will be assumed to apply only to documents stored on paper or microfiche; generally, retrieval of documents stored electronically is significantly more expensive. See information below regarding electronic records.

Because we must comply with the Colorado Public Records Act, certain documents, such as those containing individual student or employee information, are confidential and we are not able to release them except to the one who is the subject of the record (or the parent/guardian of such a person) or in response to a subpoena. Requests for such records will be denied. If we deny access, you may request a written statement citing the law or regulation under which access is denied.

Also, if the records are "in active use, in storage or otherwise not readily available" we will let you know at the time of the request and give you an idea of when the documents can be provided.

By signing below, you represent that you are not a party to a lawsuit against the School District or one of its employees, and that you are not acting on behalf of such a party. (In such cases, the Colorado Rules of Civil Procedure, and not the Aurora Public Schools records policy, applies.)

Form completed by (please sign and print your name)

Printed Name

Signature

Date

REQUEST FOR PUBLIC RECORDS

Page 3 of 3

Information Concerning Electronically Stored Records

Because of the resources necessary to respond to a request for electronic records, additional charges apply to requests for such records, except where only the output of a word processing program is required. We charge the fees listed in KDB-1-E.

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. (All fees *are in addition to* the costs of photocopying or other duplication):

\$33.58/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.