

EAST PENNSBORO AREA SCHOOL DISTRICT

SECTION: OPERATIONS

TITLE: PUBLIC RECORDS

ADOPTED: August 9, 1982

REVISED: January 20, 2009

801. PUBLIC RECORDS	
1. Purpose	The Board recognizes the importance of public records as the record of the district's actions and the repository of information about this district. The public has the right to access and procure copies of public records, with certain exceptions, subject to law, Board policy and administrative regulations.
2. Definitions 65 P.S. Sec. 67.102	<p>Aggregated Data - a tabulation of data which relate to broad classes, groups or categories so that it is not possible to distinguish the properties of individuals within those classes, groups or categories.</p> <p>Financial record - any account, voucher or contract dealing with the receipt or disbursement of funds by the district or the district's acquisition, use or disposal of services, supplies, materials, equipment or property; or the salary or other payments or expenses paid to an officer or employee, including the individual's name and title; and a financial audit report, excluding the audit's underlying work papers.</p> <p>Public record - a record, including a financial record, that is not protected by a defined privilege or is not exempt from being disclosed under one of the exemptions in Pennsylvania's Right-to-Know Law or under other federal or state law or regulation, or judicial decree or order.</p> <p>Record - information, regardless of physical form or characteristics, that documents a district transaction or activity and is created, received or retained pursuant to law or in connection with a district transaction, business or activity. 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.</p> <p>Response - the district's granting of access to a record or the district's written notice to a requester granting, denying, or partially granting and partially denying access to a requested record.</p> <p>Requester - a legal resident of the United States, or an agency, who requests access to a record.</p>

<p>3. Authority 65 P.S. Sec. 67.302, 67.305, 67.504, 67.701</p>	<p>The Board shall make the district's public records available for access and duplication to a requester, in accordance with law, Board policy and administrative regulations.</p>
<p>4. Delegation of Responsibility 65 P.S. Sec. 67.502</p>	<p>The Board designates the Superintendent as the Open Records Officer, who shall be responsible to:</p> <ol style="list-style-type: none"> 1. Receive requests for access to records submitted to the district. 2. Review and respond to written requests in accordance with law, Board policy and administrative regulations. 3. Direct requests to other appropriate individuals in the district or in another agency. 4. Track the district's progress in responding to requests. 5. Issue interim and final responses to submitted requests. 6. Maintain a log of all record requests and their disposition. 7. Ensure district staff are trained to perform assigned job functions relative to requests for access to records.
<p>65 P.S. Sec. 67.502, 67.901, 67.1101</p>	<p>Upon receiving a request for access to a record, the Open Records Officer shall:</p> <ol style="list-style-type: none"> 1. Note the date of receipt on the written request or require that any verbal request be submitted in writing on the uniform form. 2. Compute and note on the written request the day on which the five-day period for response will expire. 3. Maintain an electronic or paper copy of the written request, including all documents submitted with the request, until the request has been fulfilled. 4. If the written request is denied, maintain the written request for thirty (30) days or, if an appeal is filed, until a final determination is issued or the appeal is deemed denied.

5. Guidelines
65 P.S.
Sec. 67.701

Requesters may access and procure copies of the public records of the district during the regular business hours of the administration offices.

A requester's right of access does not include the right to remove a record from the control or supervision of the Open Records Officer.

65 P.S.
Sec. 67.302

The district shall not limit the number of records requested.

65 P.S.
Sec. 67.705

When responding to a request for access, the district is not required to create a record that does not exist nor to compile, maintain, format or organize a record in a manner which the district does not currently use.

42 U.S.C.
Sec. 12132
28 CFR
Sec. 35.160,
35.164

Information shall be made available to individuals with disabilities in an appropriate format, upon request and with sufficient advance notice.

65 P.S.
Sec. 67.504,
67.505

The district shall post at the administration office and on the district's web site, if the district maintains a web site, the following information:

1. Contact information for the Open Records Officer.
2. Contact information for the state's Office of Open Records or other applicable appeals officer.
3. The form to be used to file a request, with a notation that the state Office of Open Records form may also be used if the district decides to create its own form.
4. Board policy, administrative regulations and procedures governing requests for access to the district's public records.

Records Subject To Disclosure

If the requested information is determined to fall within the definition of "record", the Open Records Officer must then determine whether any exemption, court order or privilege applies.

	<u>Exempt Records</u>
	<p>Unless the document constitutes a “financial record” or constitutes “aggregated data” maintained or received by the public school entity, the following records are exempt from disclosure and are not to be disclosed unless the rules pertaining to the disclosure of nonpublic records have been fulfilled.</p>
65 P.S. Sec. 67.708(b)(1)	1. <i>Loss of federal or state funds.</i> A record the disclosure of which would result in the loss of federal or state funds.
65 P.S. Sec.67.708(b)(1)	2. <i>Reasonable likelihood of substantial and demonstrable risk of physical harm or personal security.</i> A record the disclosure of which would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.
65 P.S. Sec. 67.708(b)(2)	3. <i>Public Safety.</i> A record in connection with a public safety activity if disclosure would be reasonably likely to jeopardize or threaten public safety.
65 P.S. Sec. 67.708(b)(3)	<p>4. <i>Safety or security of facilities.</i> A record the disclosure of which creates a reasonable likelihood of endangering the safety or physical security of a building, public utility, resource, infrastructure, facility or information storage system, including:</p> <ul style="list-style-type: none"> a. Lists of infrastructure, resources and significant special events, threat assessments, consequences assessments, antiterrorism protective measures and plans and security and response-needs assessments. b. Building plans or infrastructure records that expose or create vulnerability through disclosure of critical systems, such as structural elements, technology, communication, electrical, fire suppression, etc.
65 P.S. Sec. 67.708(b)(5)	5. <i>Medical information.</i> A record of an individual’s medical, psychiatric or psychological history or disability status, enrollment in a healthcare program or a program designed for participation by persons with disabilities, including vocational rehabilitation, workers’ compensation and unemployment compensation, or related information that would disclose individually identifiable health information.
65 P.S. Sec. 67.708(b)(6)	6. <i>Personal identification information.</i> A record containing all or part of a person’s Social Security number; driver’s license number; personal financial information; home, cellular or personal telephone numbers; personal e-mail addresses; employee number or other confidential personal identification number; a spouse’s name; marital status; and beneficiary or dependent information.

However, although the foregoing personal information is exempt from disclosure, "financial records" as defined in the Right-to-Know Law must be disclosed, including the name, position, salary, actual compensation or other payments or expenses, employment contract, employment related contract and length of service of a public official or an employee.

65 P.S.
Sec. 67.708(b)(7)

7. *Certain employee information.* The following records pertaining to an employee are exempt:

- a. Reference letters.
- b. Performance ratings or reviews.
- c. State civil service test results.
- d. Employment applications of unsuccessful applicants.
- e. Workplace support services program information.
- f. Written criticisms of an employee.
- g. Grievance material, including documents related to discrimination or sexual harassment.
- h. Information regarding discipline, demotion or discharge contained in a personnel file (except that the record(s) pertaining to the final action or demotion or discharge are not exempt).
- i. An academic transcript.

65 P.S.
Sec. 67.708(b)(8)

8. *Labor relations, negotiations and arbitration.* A record pertaining to strategy or negotiations relating to labor relations or collective bargaining and related arbitration proceedings (except the final or executed contract). In the case of grievances and arbitration, the exemption applies to exhibits entered into evidence at an arbitration proceeding and a transcript of the arbitration or the opinion (except that the final award or order is not exempt).

65 P.S.
Sec. 67.708(b)(9)

9. *Predecisional drafts.* Drafts of bills, policy, management directives, ordinances or amendments to any of the foregoing are exempt.

<p>65 P.S. Sec. 7.708(b)(10)</p>	<p>10. <i>Predecisional deliberations.</i> A record that reflects the internal, predecisional deliberations of a public school board, employees or officials, including predecisional deliberations relating to budget recommendations, or contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations or the strategy to be used to develop or achieve the successful adoption of a budget. However, the predecisional deliberations provision has a number of exceptions. The exceptions are as follows:</p>
<p>65 P.S. Sec. 67.708 (b)(10)(ii)</p>	<p>a. Documents distributed to a quorum for purposes of deliberation. If a record described above is not otherwise exempt and is “presented to a quorum for deliberation in accordance with 65 Pa. C.S.A. Ch. 7 [related to the Sunshine Act], [it] shall be a public record.” Those predecisional documents that are distributed to school boards and that are used in deliberations permitted to take place in private can remain private and are not required to be disclosed under the Right-to-Know Law.</p>
<p>65 P.S. Sec.67.708 (b)(10)(iii)</p>	<p>b. Certain applications. The predecisional deliberations exemption does not apply to applications or other documents submitted to request Commonwealth funds.</p>
<p>65 P.S. Sec. 67.708 (b)(10)(iv)</p>	<p>c. Opinion surveys. The predecisional deliberations exemption does not apply to the results of public opinion surveys, polls, focus groups, marketing research or similar effort designed to measure public opinion.</p>
<p>65 P.S. Sec. 67.708 (b)(11)</p>	<p>11. <i>Trade secrets and confidential proprietary information.</i> A record that constitutes or reveals a trade secret or confidential proprietary information is exempt from disclosure.</p>
<p>65 P.S. Sec. 67.708 (b)(12)</p>	<p>12. <i>Personal notes and working papers.</i> Notes and working papers prepared by or for a public official or agency employee used solely for that individual’s personal use are exempt from disclosure.</p>
<p>65 P.S. Sec. 67.708 (b)(13)</p>	<p>13. <i>Donor identity.</i> Records that would disclose the identity of an individual who lawfully makes a donation to an agency (including lists of potential donors compiled by an agency to pursue donations, donor profile information or personal identifying information pertaining to a donor) are exempt from disclosure, unless the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public office or employee of the agency.</p>

65 P.S. Sec. 67.708 (b)(15)	14. <i>Academic records.</i> Academic transcripts and examinations, examination questions, scoring keys and answers to examinations are not public records.
65 P.S. Sec. 67.708 (b)(16)	15. <i>Criminal investigations.</i> Records relating to or resulting in a criminal investigation are exempt. This includes complaints of potential criminal conduct; investigative materials and notes, correspondence, and videos; records that include the identity of a confidential source; and victim information.
65 P.S. Sec. 67.708 (b)(17)	16. <i>Noncriminal investigations.</i> Records of an agency relating to a noncriminal investigation are exempt. This includes complaints; investigative materials and notes; a record that contains the identity of a confidential source; a record that would review the institution, progress or result of any agency investigation; a record that would deprive a person of the right to an impartial adjudication; a record that would constitute an unwarranted invasion of privacy; or any record that would hinder an agency's ability to secure an administrative or civil sanction or endanger the life or physical safety of an individual.
65 P.S. Sec. 67.708 (b)(21)	17. <i>Draft minutes/Executive session.</i> Draft minutes of any meeting of an agency are exempt until the next regularly scheduled meeting of the agency. Minutes of an executive session and any record of discussion held in executive session are exempt.
65 P.S. Sec. 67.708 (b)(22)	18. <i>Real estate appraisals and feasibility studies.</i> The contents of real estate appraisals, engineering or feasibility estimates, environmental review, audits or evaluations made with respect to (a) leasing, acquiring or disposing of real property or an interest in real property; (b) the purchase of supplies or equipment included in the real estate transaction; or (c) a construction project are all exempt. This particular exemption does not apply once the decision is made to proceed with the lease or acquisition.
65 P.S. Sec. 67.708 (b)(23-24)	19. <i>Library records.</i> Library and archive circulation and order records of an identifiable individual or group of individuals or library archived and museum materials, or valuable or rare book collections or documents contributed by gift, grant or bequest, to the extent of any limitations imposed by the donor, are all exempt.
65 P.S. Sec. 67.708 (b)(26)	20. <i>Precontract award documents.</i> The following documents are exempt: <ul style="list-style-type: none"> a. A proposal pertaining to agency procurement or disposal of supplies, services or construction are exempt prior to the award of the contract or prior to the opening and rejection of all bids.

	<ul style="list-style-type: none"> b. Financial information of a bidder or offerer requested in an invitation for bid or request for proposals to demonstrate the bidder's or offerer's economic capability. c. The identity of members, notes and other records of agency proposal evaluation committees.
<p>65 P.S. Sec. 67.708 (b)(27)</p>	<p>21. <i>Insurance communications.</i> A record or information relating to a communication between an agency and its insurance carrier, administrative service organization or risk management office is exempt. However, this exemption does not apply to the actual contract or to financial records relating to the provision of insurance.</p>
<p>65 P.S. Sec. 67.708 (b)(30)</p>	<p>22. <i>Minors.</i> A record identifying the name, home address or date of birth of a child seventeen (17) years of age or younger is exempt.</p> <p><u>Request For Access</u></p>
<p>65 P.S. Sec. 67.504, 67.505, 67.703</p>	<p>A written request for access to a public record shall be submitted on the required form(s) and addressed to the Open Records Officer.</p> <p>Written requests may be submitted to the district in person, by mail, to a designated facsimile machine, and to a designated e-mail address. The fax number and e-mail address shall be posted on the web site.</p>
<p>65 P.S. Sec. 67.701, 67.703</p>	<p>Each request must include the following information:</p> <ol style="list-style-type: none"> 1. Identification or description of the requested record, with sufficient specificity to enable the district to ascertain what records are being requested. 2. Medium in which the record is requested. If it exists in that medium, the request shall be honored; otherwise, it shall be provided in the medium in which it exists. 3. Name and address of the individual to receive the district's response.
<p>65 P.S. Sec. 67.703</p>	<p>The district shall not require an explanation of the reason for the request or the intended use of the requested record, unless otherwise required by law.</p>
<p>65 P.S. Sec. 67.1307</p>	<p><u>Fees</u></p> <p>The Board shall approve and the district shall keep current a list of reasonable fees relative to requests for public records.</p>

<p>65 P.S. Sec. 67.1307</p>	<p>No fee may be imposed for review of a record to determine whether the record is subject to access under law.</p>
<p>65 P.S. Sec. 67.1307</p>	<p>Prior to granting access, the district may require prepayment of estimated fees when the fees required to fulfill the request are expected to exceed \$100.</p>
<p>65 P.S. Sec. 67.1307</p>	<p>The Superintendent may waive duplication fees when the requester duplicates the record or the Superintendent deems it is in the public interest to do so.</p>
<p><u>Response To Request</u></p>	
<p>65 P.S. Sec. 67.502, 67.702</p>	<p>District employees shall be directed to forward requests for access to public records to the Open Records Officer.</p>
<p>65 P.S. Sec. 67.901</p>	<p>Upon receipt of a written request for access to a record, the Open Records Officer shall determine if the requested record is a public record and if the district has possession, custody or control of that record.</p>
<p>65 P.S. Sec. 67.901</p>	<p>The Open Records Officer shall respond as promptly as possible under the existing circumstances, and the initial response time shall not exceed five (5) business days from the date the written request is received by the Open Records Officer.</p>
<p>The initial response shall grant access to the requested record, deny access to the requested record, partially grant and partially deny access to the requested record, or notify the requester of the need for an extension of time to fully respond.</p>	
<p>65 P.S. Sec. 67.901</p>	<p>If the district fails to respond to a request within five (5) business days of receipt, the request for access shall be deemed denied.</p>
<p><u>Extension Of Time</u></p>	
<p>65 P.S. Sec. 67.901, 67.902</p>	<p>If the Open Records Officer determines that an extension of time is required to respond to a request, in accordance with the factors stated in law, written notice shall be sent within five (5) business days of receipt of request. The notice shall indicate that the request for access is being reviewed, the reason that the review requires an extension, a reasonable date when the response is expected, and an estimate of applicable fees owed when the record becomes available.</p>
<p>Up to a thirty (30) day extension for one (1) of the listed reasons does not require the consent of the requester. If the response is not given by the specified date, it shall be deemed denied on the day following that date.</p>	

A requester may consent in writing to an extension that exceeds thirty (30) days, in which case the request shall be deemed denied on the day following the date specified in the notice if the Open Records Officer has not provided a response by that date.

Granting Of Request

If the Open Records Officer determines that the request will be granted, the response shall inform the requester that access is granted and either include information on the regular business hours of the administration office, provide electronic access, or state where the requester may go to inspect the records or information electronically at a publicly accessible site. The response shall include a copy of the fee schedule in effect, a statement that prepayment of fees is required in a specified amount if access to the records will cost in excess of \$100.00, and the medium in which the records will be provided.

65 P.S.
Sec. 67.701

A public record shall be provided to the requester in the medium requested if it exists in that form; otherwise, it shall be provided in its existing medium. However, the district is not required to permit use of its computers.

65 P.S.
Sec. 67.701,
67.704

The Open Records Officer may respond to a records request by notifying the requester that the record is available through publicly accessible electronic means or that the district shall provide access to inspect the record electronically. If the requester, within thirty (30) days following receipt of the district's notice, submits a written request to have the record converted to paper, the district shall provide access in printed form within five (5) days of receipt of the request for conversion to paper.

65 P.S.
Sec. 67.506

A public record that the district does not possess but is possessed by a third party with whom the district has contracted to perform a governmental function and which directly relates to that governmental function shall be considered a public record of the district. When the district contracts with such a third party, the district shall require the contractor to agree in writing to comply with requests for such records and to provide the district with the requested record in a timely manner to allow the district to comply with law.

65 P.S.
Sec. 67.706

If the Open Records Officer determines that a public record contains information both subject to and not subject to access, the Open Records Officer shall grant access to the information subject to access and deny access to the information not subject to access. The Open Records Officer shall redact from the record the information that is not subject to access. The Open Records Officer shall not deny access to a record if information is able to be redacted.

<p>65 P.S. Sec. 67.905</p>	<p>If the Open Records Officer responds to a requester that a copy of the requested record is available for delivery at the administration office and the requester does not retrieve the record within sixty (60) days of the district's response, the district shall dispose of the copy and retain any fees paid to date.</p>
<p>65 P.S. Sec. 67.707</p>	<p><u>Notification To Third Parties</u></p> <p>When the district produces a record that is not a public record in response to a request, the Open Records Officer shall notify any third party that provided the record to the district, the person that is the subject of the record, and the requester.</p>
<p>65 P.S. Sec. 67.707</p>	<p>The Open Records Officer shall notify a third party of a record request if the requested record contains a trade secret or confidential proprietary information, in accordance with law and administrative regulations.</p>
<p>65 P.S. Sec. 67.901, 67.903</p>	<p><u>Denial Of Request</u></p> <p>If the Open Records Officer denies a request for access to a record, whether in whole or in part, a written response shall be sent within five (5) business days of receipt of the request. The response denying the request shall include the following:</p> <ol style="list-style-type: none"> 1. Description of the record requested. 2. Specific reasons for denial, including a citation of supporting legal authority. 3. Name, title, business address, business telephone number, and signature of the Open Records Officer on whose authority the denial is issued. 4. Date of the response. 5. Procedure for the requester to appeal a denial of access.
<p>65 P.S. Sec. 67.506</p>	<p>The Open Records Officer may deny a request for access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the district.</p>
<p>65 P.S. Sec. 67.506</p>	<p>The Open Records Officer may deny a request for access to a record when timely access is not possible due to a disaster, or when access may cause physical damage or irreparable harm to the record. To the extent possible, a record's contents shall be made accessible even when the record is physically unavailable.</p>

<p>65 P.S. Sec. 67.706, 67.903</p>	<p>Information that is not subject to access and is redacted from a public record shall be deemed a denial.</p>
<p>65 P.S. Sec. 67.1101</p>	<p>If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the state's Office of Open Records within fifteen (15) business days of the mailing date of the Open Records Officer's response or of a deemed denial.</p>
	<p>References:</p>
	<p>School Code – 24 P.S. Sec. 408, 518</p>
	<p>Right-to-Know Law – 65 P.S. Sec. 67.101 et seq.</p>
	<p>Americans With Disabilities Act – 42 U.S.C. Sec. 12101 et seq.</p>
	<p>Accessibility to Communications, Title 28, Code of Federal Regulations – 28 CFR Sec. 35.160, 35.164</p>
	<p>Board Policy – 800</p>