

# PUBLIC RECORDS POLICY

## Table of Contents

Purpose  
Definitions  
Authority  
Delegation of Responsibility  
Guidelines

### I. Public Records

- A. Exempted Records Under the Right-to-Know Law
- B. Records Protected by Privilege
- C. Other Exempted Records

### II. Access of the Public Records

### III. Requests for and Response to Public Records

- A. Request for Records
- B. Fees
- C. Response to Request
- D. Extension of Time
- E. Granting of Request
- F. Notification to Third Parties
- G. Denial of Request

### IV. Disclosure /Production of Certain Records

- A. Certified Copies
- B. District Does Not Possess Record
- C. Transcript of Administrative Proceedings
- D. Trade Secrets/Confidential Proprietary Information
- E. Discretionary Access

The Board recognizes the importance of public records as the record of the Intermediate Unit's actions and the repository of information about the Intermediate Unit. The public has the right to access and procure copies of public records, with certain exceptions, subject to law, Board policy and administrative regulations.

Financial Record – (1) any account, voucher or contract dealing with the receipt or disbursement of funds of the Intermediate Unit, or the Intermediate Unit's acquisition, use or disposal of services, supplies, materials, equipment or property, or (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; and (3) a financial audit report, excluding the audit's underlying work papers.

Public Record – a record, including a financial record, of the Intermediate Unit that is not protected by a privilege defined under the Right-to-Know Law, is not exempt from being disclosed under one of the exceptions in the Pennsylvania Right-to-Know Law, or is not exempt under other federal or state law or regulation, or judicial order or decree.

Record – information, regardless of physical form or characteristics, that document an Intermediate Unit transaction or activity and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the Intermediate Unit. Record 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 person who is a legal resident of the United States, including an agency, who requests access to a record pursuant to the Right-to-Know Law.

Response – access to a record or the Intermediate Unit’s written notice to a requester granting, denying, or partially granting and partially denying access to a record.  
The Board must make the Intermediate Unit’s public records available for access and duplication to a requester in accordance with law, Board policy, and administrative regulations.

The Board must designate an Open Records Officer, who will be responsible to:

1. Receive written requests for access to records submitted to the Intermediate Unit.
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 Intermediate Unit or to appropriate persons in another agency.
4. Track the Intermediate Unit’s progress in responding to requests.
5. Issue interim and final responses to submitted requests as required under the Right-to-Know Law.
6. Maintain a log of all record requests and their disposition.
7. Ensure that Intermediate Unit employees are trained to perform assigned job functions relative to requests for access to records.

Upon receiving a request for access to a record, the Open Record Officer must do all of the following:

1. Note the date of receipt on the written receipt.
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 and required under the Right-to-Know Law, or the appeal is deemed denied.

#### I. Public Records

A record in the possession of the Intermediate Unit is presumed to be a public record, unless it is exempt under the Right-to-Know Law, is protected by a defined privilege, or the record is exempt from disclosure under any other federal or state law or regulation or judicial order or decree.

Upon the receipt of a written request for access to a record, the Intermediate Unit must make a good faith effort to determine if the record requested is a public record.

##### A. Exempted Records Under the Right-to-Know Law

The following records are exempt from public access by a requester in accordance with the Right-to-Know Law. To determine if a requested record is exempt from access, the Open Records Officer will consider and apply each exemption separately.

1. Loss of Funds/Physical Harm/Personal Security – when the disclosure of a record would result in the Intermediate Unit’s loss of federal or state funds or would reasonably be likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.
2. Public Safety – when the disclosure of an Intermediate Unit record maintained in connection with the military, homeland security, national defense, law enforcement or other public safety activity that if disclosure would reasonably be likely to jeopardize or threaten public safety or preparedness or public protection activity, or a record that is designated classified by an appropriate federal or state military authority.
3. Safety/Security of Facilities – when the disclosure of a record creates a reasonable likelihood of endangering the safety of physical security of a building, public utility, resource, infrastructure, facility, or information storage system, which may include:

- a. Documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act;
  - b. Lists of infrastructure, resources and significant special events, including those defined by the federal government in the National Infrastructure Protections, that are deemed critical due to their nature and result from risk analysis, threat assessments, consequences assessments, antiterrorism protective measures and plans, counterterrorism measures and plans, and security needs assessments; and
  - c. Building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems, structural elements, technology, communication, electrical, fire, suppression, ventilation, water, wastewater, sewage, and gas system.
4. Computer Systems – when the disclosure of a record regarding computer hardware, software and networks, including administrative and technical records, would reasonably be likely to jeopardize computer security.
5. Medical Information – when the disclosure of a record of an individual’s medical, psychiatric, or psychological history or disability status, including an evaluation, consultation, prescription, diagnosis or treatment; results of tests, including drug tests; enrollment in a health care program or 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.
6. Personal Identification Information – disclosure of the following personal identification information:
- a. A record containing all or part of an individual’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.
  - b. A spouse’s name, marital status, beneficiary or dependent information.
  - c. The home address of a law enforcement officer or judge.

Personal information that must be disclosed includes the name, position, salary, actual compensation or other payments or expenses, employment contract, employment-related contract or agreement, and length of service of a public official or district employee.

The Open Records Officer may redact from a record the name or other identifying information relating to an individual performing an undercover or covert law enforcement activity.

7. Certain Employee Information – disclosure of the following records relating to an Intermediate Unit employee:
- a. A letter of reference or recommendation pertaining to the character or qualifications of an identifiable individual, unless it was prepared in relation to the appointment of an individual to fill a vacancy in an elected office or an appointed office requiring Senate confirmation.
  - b. A performance rating or review.
  - c. The result of a civil service or similar test administered by a Commonwealth agency, legislative agency or judicial agency. The result of a civil service or similar test administered by a local agency must not be disclosed if restricted by a collective bargaining agreement. Only test scores of individuals who obtained a passing score on a test administered by a local agency may be disclosed.
  - d. The employment application of an individual who is not hired by the Intermediate Unit.
  - e. Workplace support services program information.

- f. Written criticisms of an Intermediate Unit 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 information that applies to the Intermediate Unit's final action that results in demotion or discharge.
  - i. An academic transcript.
8. Labor Relations/Negotiations/Arbitration – disclosure of a record pertaining to strategy or negotiations relating to labor relations or collective bargaining and related arbitration proceedings. In the case of the arbitration of a dispute or grievance under a collective bargaining agreement, disclosure of an exhibit entered into evidence at an arbitration proceeding or a transcript of the arbitration or the opinion.

This exemption does not apply to a final or executed contract or agreement between the parties in a collective bargaining agreement, or to the final award or order of the arbitrator in a dispute or grievance procedure.

9. Predecisional Drafts – disclosure of the draft of a bill, resolution, regulation, statement of policy, management directive, ordinance, or their amendments, prepared by or for the Intermediate Unit.
10. Predecisional Deliberations – disclosure of a record that reflects:
- a. The internal, predecisional deliberations of the Intermediate Unit, its Board members, employees or officials, or predecisional deliberations between Intermediate Unit Board members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action, or any research, memos or other documents used in the predecisional deliberations, subject to law governing open meetings.
- Public records do include a record of any of the above that is not exempt from access by law and which is presented to a quorum for deliberation in accordance with law governing open meetings, a written or Internet application or document that has been submitted to request Commonwealth funds, and the results of public opinion surveys, polls, focus groups, marketing research or similar efforts designed to measure public opinion.
- b. The strategy to be used to develop or achieve the successful adoption of a budget, legislative proposal or regulation.
11. Trade Secret/Confidential Proprietary Information – disclosure of a record that constitutes or reveals a trade secret or confidential proprietary information.
12. Personal Notes/Working Papers – disclosure of notes and working papers prepared by or for an Intermediate Unit public official or employee used solely for that official's or employee's own personal use, including telephone message slips, routing slips, and other materials that do not have an official purpose.
13. Donor Identity – disclosure of records that would disclose the identity of an individual who lawfully makes a donation to the Intermediate Unit, unless the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named Intermediate Unit public official or employee, including lists of potential donors compiled by the Intermediate Unit to pursue donations, donor profile information, or personal identifying information relating to a donor.
14. Unpublished Academic Works – disclosure of unpublished lecture notes, unpublished manuscripts, unpublished articles, creative works in progress, research-related material, and scholarly correspondence of a community college or an institution of the State System of Higher Education or one of their faculty members, employees, guest speakers or students.

15. Academic Records – disclosure of academic transcripts, examinations, examination questions, scoring keys or answers to examinations, including licensing and other examinations relating to the qualifications of an individual, examinations given in Intermediate Unit schools, and examinations given in institutions of higher education.
16. Criminal Investigations – disclosure of a record of the Intermediate Unit or an agency relating to or resulting in a criminal investigation, including:
  - a. Complaints of potential criminal conduct other than a private criminal complaint.
  - b. Investigative materials, notes, correspondence, videos, and reports.
  - c. A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.
  - d. A record that includes information made confidential by law or court order.
  - e. Victim information, including any information that would jeopardize the safety of a victim.
  - f. A record that if disclosed would reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges, deprive a person of the right to a fair trial or impartial adjudication, impair the ability to locate a defendant or codefendant, hinder an agency's ability to secure an arrest, prosecution or conviction, or endanger the life or physical safety of an individual.

This exemption does not apply to information contained in a police blotter as defined in law and utilized or maintained by the Pennsylvania State Police, local, campus, transit or port authority police department or other law enforcement agency, or in a traffic report except as provided by law.

17. Noncriminal Investigation – disclosure of an Intermediate Unit record relating to a noncriminal investigation, including:
  - a. Complaints submitted to the Intermediate Unit.
  - b. Investigative materials, notes, correspondence, and reports.
  - c. A record that includes the identity of a confidential source, including individuals subject to the Whistleblower Law.
  - d. A record that includes information made confidential by law.
  - e. Work papers underlying an audit.
  - f. A record that, if disclosed, would reveal the institution, progress or result of an Intermediate Unit investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court; deprive a person of the right to an impartial adjudication; constitute an unwarranted invasion of privacy; hinder an agency's ability to secure an administrative or civil sanction; or endanger the life or physical safety of an individual.
18. Emergency Communications – disclosure of records or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings, except when the agency or a court determines that the public interest in disclosure of a 911 recording, or a transcript of a 911 recording outweighs the interest in nondisclosure.
19. DNA/RNA – disclosure of DNA and RNA records.
20. Coroner/Medical Examiner – disclosure of specific records and reports of a coroner or medical examiner.

21. Draft Minutes – disclosure of draft minutes of any School Board meeting until the next regularly scheduled Board meeting, minutes of an executive session, and any record of discussions held in executive sessions.
22. Real Estate Appraisals/Feasibility Studies – disclosure of the contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by the Intermediate Unit relative to the leasing, acquiring, or disposing of real property or an interest in real property, the purchase of public supplies or equipment included in the real estate transaction, and construction projects.

This exemption does not apply to the documents listed above once the decision is made to proceed with the lease, acquisition or disposal of real property or an interest in real property, the purchase of public supplies, or a construction project.

23. Library Records – disclosure of library and archive circulation and order records of an identifiable individual or group of individuals.
24. Library/Museum Materials – disclosure of library archived and museum materials, or valuable or rare book collections or documents contributed by gift, grant, bequest or devise, to the extent of any limitations imposed by the donor as a condition of the contribution.
25. Archeological Site/Endangered Species – disclosure of a record identifying the location of an archeological site or an endangered or threatened plant or animal species if not already known to the general public.
26. Pre-Contract Award Documents – disclosure of a proposal pertaining to Intermediate Unit procurement or disposal of supplies, service or construction prior to the award of the contract or prior to the opening and rejection of all bids, financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability, or the identity of members, notes and other records of Intermediate Unit proposal evaluation committees established under law relating to competitive sealed proposals.
27. Insurance Communications – disclosure of a record or information relating to a communication between the Intermediate Unit and its insurance carrier, administrative service organization or risk management office.  
  
This exemption does not apply to a contract with an insurance carrier, administrative service organization or risk management office, or to financial records relating to the provision of insurance.
28. Social Services – disclosure of a record or information (1) identifying an individual who applies for or receives social services or (2) relating to the type of social services received by an individual, and an individual's application to receive social services, or relating to the eligibility to receive social services.
29. General Assembly Correspondence – disclosure of correspondence between an individual and member of the General Assembly and records accompanying the correspondence that would identify a person requesting assistance or constituent services, except for correspondence between a member of the General Assembly and a principal or lobbyist under lobbyist disclosure law.
30. Minors – disclosure of a record identifying the name, home address or date of birth of a child seventeen (17) of age or younger years.
31. Financial Records - The listed exceptions do not apply to financial records, except that the Intermediate Unit's Open Records Officer may redact the portions of a financial record protected under exceptions 1, 2, 3, 4, 5, 6, 16, or 17 above.
32. Aggregated Data - The listed exceptions do not apply to aggregated data maintained or received by the Intermediate Unit, except for data protected under exceptions 1, 2, 3, 4, or 5 above.
33. Law Enforcement Activity - The Intermediate Unit's Open Records Officer must not disclose the identity of an individual performing an undercover or covert law enforcement activity.

## B. Records Protected By Privilege

Intermediate Unit records that may not be accessed or produced to the requester include those protected by the attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege, or other privilege recognized by a court interpreting the laws of Pennsylvania.

## C. Other Exempted Records

Other Intermediate Unit records are exempt from disclosure as specified in other federal or state law or regulation or judicial order or decree.

## II. Access to Public Records

A. The Intermediate Unit may not deny a requester access to a public record due to the intended use of the public record by the requester unless otherwise provided by law.

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

C. The Intermediate Unit's Open Records Officer will not grant requests for access to any computer either of the Intermediate Unit or individual employees of the Intermediate Unit.

D. 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.

E. Nothing in the Right-to-Know Law or this Policy may be construed to modify, rescind, or supersede the Intermediate Unit's Record Retention Policy, Records Destruction Policy, and Records Retention/Disposition Schedule.

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

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

H. The Intermediate Unit must post at the administration office and on the Intermediate Unit's Internet web site, if the Intermediate Unit 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, which may be the state Office of Open Records uniform form and/or the Intermediate Unit's own created form.
4. Board policy, administrative regulations, and procedures of the Intermediate Unit relating to the Right-to-Know Law.

## III. Requests for and Response to Public Records

### A. Request for Records

A written request for access to a public record must be submitted on the required form(s) and addressed to the Open Records Officer.

Written requests may be submitted to the Intermediate Unit in person, by mail, and to a designated facsimile machine.

Each request must include the following information:

1. Identification or description of the requested record, in sufficient detail.
2. Medium in which the record is requested.
3. Name and address of the individual to receive the Intermediate Unit's response.

#### B. Fees

The Board must approve and the Intermediate Unit must keep current a list of reasonable fees relative to requests for public records.

No fee may be imposed for review of a record to determine whether the record is subject to access under law.

Prior to granting access, the Intermediate Unit may require prepayment of estimated fees when the fees required to fulfill the request are expected to exceed \$25.

The Executive Director may waive duplication fee when the requester duplicates the record or the Executive Director deems it is in the public interest to do so.

#### C. Response to Request

The Intermediate Unit must not require an explanation of the reason for the request or the intended use of the requested record, unless otherwise required by law.

Intermediate Unit employees will be directed to forward requests for access to public records to the Open Records Officer.

Upon receipt of a written request for access to a record, the Open Records Officer will determine if the requested record is a public record and if the Intermediate Unit has possession, custody or control of that record.

The Open Records Officer must respond as promptly as possible under the existing circumstances, and the initial response time must not exceed five (5) business days from the date the written request is received by the Open Records Officer.

The initial response must 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.

If the Intermediate Unit fails to respond to a request within five (5) business days of receipt, the request for access shall be deemed denied.

#### D. Extension of Time

Upon receipt of a written request for access, the Open Records Officer will determine if any one of the following applies:

1. Redaction – the request for access requires redaction of a record.
2. Retrieval Time/Remote Storage – the request for access requires retrieval of a record stored in a remote location.
3. Staffing Limitations – a timely response to the request for access cannot be accomplished due to *bona fide* and specified staffing limitations.
4. Legal Review – a legal review is necessary to determine whether the requested record is a public record subject to access.
5. Lack of Policy Compliance – the requester has not complied with the Board policy governing access to public records.
6. Failure to Pay Fees – the requester refuses to pay applicable, established fees.
7. Nature of Request – the extent or nature of the request precludes a response within the required time period.

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 will be sent within five (5) business days of receipt of request. The notice must 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.

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.

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

#### **E. Granting of Request**

If the Open Records Officer determines that the request will be granted, the response must 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 twenty-five dollars (\$25.00), and the medium in which the records will be provided.

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

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 Intermediate Unit must provide access to inspect the record electronically. If the requester, within thirty (30) days following receipt of the Intermediate Unit's notice, submits a written request to have the record converted to paper, the Intermediate Unit must provide access in printed form within five (5) days of receipt of the request for conversion to paper.

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

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

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 Intermediate Unit's response, the Intermediate Unit must dispose of the copy and retain any fees paid to date.

#### **F. Notification to Third Parties**

When the Intermediate Unit produces a record that is not a public record in response to a request, the Open Records Officer must notify any third party that provided the record to the Intermediate Unit, the person that is the subject of the record, and the requester.

The Open Records Officer must 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.

#### **G. Denial of Request**

If the Open Records Officer denies a request for access to a record, whether in whole or in part, a written response must be sent within five (5) business days of receipt of the request. The response denying the request must include the following:

1. Description of the record request.
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 based.
4. Date of the response.
5. Procedure for the requester to appeal a denial of access.

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 of the Intermediate Unit.

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 must be made accessible even when the record is physically unavailable.

Information that is not subject to access and is redacted from a public record must be deemed a denial.

If a written request for access to a record is denied or deemed denied, the requester may file an appeal the Pennsylvania Office of Open Records within fifteen (15) business days of the mailing date of the Open Records Officer's response or deemed denial.

#### IV. Disclosure /Production of Certain Records

The Open Records Officer will forward copies of the Intermediate Unit's written responses to records requests to the Executive Director.

##### A. Certified Copies

If the Open Records Officer grants a request for access to a record and the requester requests a certified copy of the record for the purpose of legally verifying the public record, the Open records Officer will provide a certified copy upon payment of the applicable, established fees by the requester.

##### B. Intermediate Unit Does Not Possess Record

A request for a public record that the Intermediate Unit does not possess but is possessed by a third party with whom the Intermediate Unit has contracted to perform a governmental function and which relates directly to that governmental function must be submitted to the Intermediate Unit's Open Records Officer.

If the Open Records Officer determines that the requested record is subject to public access, the Open records Officer will respond and grant access in accordance with the law, Board policy, and administrative regulation.

The requester will pay the established duplication fee.

If the third party that possessed the requested public record duplicated the record in response to the request, the Open Records Officer will remit the fee to the third party.

The third party is not required to provide access to any other of its records.

##### C. Transcripts of Administrative Proceedings

Prior to an adjudication becoming final, binding, and nonappealable, a transcript of an administrative proceeding will be provided to a requester by the proceeding's stenographer.

To request access to a pre-final adjudication transcript possessed by a stenographer that is subject to disclosure, the requester must directly contact the stenographer and pay the fees assessed by the stenographer.

After the adjudication becomes final, binding, and nonappealable, a transcript of an administrative proceeding will be provided to a requester, and the established duplication fee will be charged.

#### D. Trade Secret/Confidential Proprietary Information

When a third party provides a record to the Intermediate Unit and includes a written statement signed by its representative that the record contains a trade secret or confidential proprietary information, the Open records Officer will notify that third party of a request for access to that record.

*Trade Secret* is defined as information, including a formula, drawing, pattern, compilation such as a customer list, program, device, method, technique, or process that derives independent economic value, actual, or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The term includes data processing software obtained by the Intermediate Unit under a licensing agreement prohibiting disclosure.

*Confidential proprietary information* is defined as commercial or financial information that is privileged or confidential and the disclosure of which would cause substantial harm to the competitive portion of the individual that submitted the information.

The Open Records Officer will provide notice within five (5) business days of receipt of the request. The third party will have five (5) business days from receipt of the Open Records Officer's notice to provide input on the release of the requested record.

The Open Records Officer will provide access to the record or will deny the request for access within ten (10) business days of providing notice to the third party and will notify the third party of the Open Records Officer's decision.

#### E. Discretionary Access

The Open Records Officer may exercise discretion and make an otherwise exempt record accessible in response to a request.

The exempted record will be made accessible for access and duplication, in accordance with law and Board Policy, if all of the following apply:

1. Disclosure of the record is not prohibited by federal or state law or regulation, or by judicial order or decree.
2. The record is not protected by privilege, to include attorney-client privilege, doctor-patient privilege, speech and debate privilege, or other privilege recognized by a relevant court.
3. The Executive Director determines that the public interest favoring access outweighs any individual, Intermediate Unit, or public interest that may favor restriction of access.

References:

Pennsylvania School Code – 24 P.S. § 408.518

Pennsylvania Right-to-Know Law – 65 P.S. § 67.101 et seq.

Americans with Disability Act - 42 U.S.C. § 12101 et seq.

Accessibility to Communications – 28 C.F.R. § 35.160 – 28 C.F.R. § 35.164

DATE ORIGINALLY ADOPTED: January 28, 2009

DATE REVISED: August 25, 2011

CONFIRMED: August 24, 2011