

## BULLETIN NO. 16

### Emergency Planning and Public Records

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When discussing public records, it's always a good idea to remember why we have public records laws. It's to ensure government bodies operate as transparently as possible. School districts are spending tax dollars educating the children of our state. Citizens, taxpayers, public officials and the media all have an expectation of openness and it's our duty to ensure we meet that expectation when possible.

#### What is a public record?

Public records are:

*any records, documents, tape, or other information, stored or preserved in any medium, **of or belonging to this state or any . . . [ political subdivision (city, county, school district, etc.)]***

Iowa Code § 22.1(3)(a)

Public Records can include:

- Emails if using a public address in to/from. Just because you can no longer access an email or document doesn't mean a forensic technologist can't.
- Documents on a computer, hard drive, flash drive, file cabinet, etc. as long as the "holder" is the governmental body
- Work conducted on a publicly owned computer such as Internet history, word documents, etc. And, remember, you can't delete any document, email, etc. if you know or should know it could be used in a legal matter. All governmental bodies, officials and employees are covered by Chapter 22, examination of public records. Each body must designate a "lawful custodian" for its records and must publicly announce who holds that responsibility. For school districts, it's the school board secretary. Iowa Code § 22.1(2)

#### Who can access public records?

Anyone can examine, photograph or copy a public record without charge while the public record is in the physical possession of the custodian during the custodian's regular office hours. Public bodies must establish reasonable rates for the examination of these records. Fulfillment of a request may be made contingent upon payment of a fee and the estimated expenses shall be communicated to the requestor. You can't question why someone wants to see a particular record. You can, however, ask questions to help narrow down the universe of information. Iowa Code § 22.3

#### So, if everything is public . . .

- Remember, just because a record is a public record does not mean there is not an exception to the law to protect that record's release.
- There are currently 67 exceptions to Iowa's public records law in the public records law.
- There are numerous exceptions throughout other state laws and in federal law as well.

#### Common Exceptions for Schools and School Districts

**Student Records Exception** - Personal information in records regarding a student, prospective student, or former student cannot be released without an exception in either state or federal law, parental consent or court order. The federal Family Educational Rights and Privacy Act (FERPA) is the primary, guiding and controlling law for student records. 34 C.F.R. pt. 99, Iowa Code 22.7(1)

Pursuant to FERPA, school districts must annually notify parents of their rights under FERPA whether to have "directory" information released about their student. Directory information generally includes name, grade, athletic information, honors and awards, picture, etc. The school district needs this parental consent, usually a passive consent, to allow it to publish programs, yearbooks, etc. 34 C.F.R. pt. 99.3.

**Health and Safety Emergency Exception** - Schools can release personally identifiable information, beyond that defined as directory information, when necessary to protect the health or safety of the student or others. The school must:

- Have an articulable and significant threat to the health or safety of a student or other individuals
- Related to an actual, impending or imminent emergency such as a natural disaster, terrorist, shooting or an epidemic

There is yet another exception to FERPA, FERPA allows schools to release confidential student information to

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- Meet the goal of reducing juvenile crime
- State and local juvenile justice agencies – must be public bodies, not non-profits
- Allow the juvenile justice system to effectively serve, prior to adjudication, the student whose records are being released. However, the information
  - Is not admissible in any court proceedings which takes place prior to a disposition hearing
  - Cannot be used as the basis for a school disciplinary action against a student
  - Must be used to determine the appropriate services needed to design a program to correct behaviors that lead to truancy, suspension, and expulsions
  - Must be used to support students in successfully completing their education

#### Components of the Juvenile Justice Sharing Agreement

- 28E Agreement between school district or nonpublic school and all interested parties remember, public bodies not nonprofits for example police, juvenile court, county attorney
- Adopted by the school district's board of directors
- Agreement includes acknowledgment of the confidentiality of all information released unless parental consent is obtained or via a court order

**Employee Records Exception** - There are also exceptions in state law for employee records. Personal information in confidential personnel records of government bodies, including:

- Application materials such as references, transcripts
- Evaluations
- Health information records are considered confidential records. In addition, most health information is also protected by federal laws such as the Health Insurance Portability and Accountability Act (HIPAA) or the Americans with Disabilities Act (ADA.) Iowa Code § 22.7(11.)

There are also records in state law that are public records but not confidential such as:

- Salary
- Benefits
- Position
- Details about a termination that was the result of final disciplinary action  
Id.

**Security Procedures Exception** - Information concerning security procedures or emergency preparedness information is specifically defined as a public record that can be withheld from disclosure if

- developed and maintained by a government body
- disclosure could reasonably be expected to jeopardize safety and
- the governmental body has adopted a rule or policy identifying the specific records or class of records to be protected  
Iowa Code § 22.7(50)

For example -

- Emergency operations and response procedures
- Evacuation procedures
- Lockdown procedures
- Passwords and other security information
- Passcodes
- Security codes
- Passwords – especially those used to communicate with law enforcement, first responders, media, etc.
- And the catchall, that disclosure would *significantly increase the vulnerability of critical physical systems or infrastructures of a government body to attack*  
Id.

Should you have questions about whether to or not to disclose a public record, contact your administrator or local counsel.

The Iowa School Safety Alliance was formed in December 2012. Participating organizations include Iowa Homeland Security & Emergency Management, Iowa

[www.iowaschoolsafety.org](http://www.iowaschoolsafety.org)

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State Fire Marshal, Iowa Division of Intelligence and Fusion Center, Iowa Department of Education, Iowa Emergency Management Association, Des Moines Police Department, Iowa State Education Association, Iowa Association of School Boards, School Administrators of Iowa, American Institute of Architects – Iowa Chapter, EMC Insurance Companies