

PUBLIC RECORDS

A. Definitions (N.J.S.A. 47:1A-1.1)

“**Board**” means the Howell Township Board of Education, school staff, including members of the administration, and any persons acting on behalf of the Board of Education.

“**State agency**” means each of the principle departments in the Executive Branch of the State Government, and all Boards, divisions, commissions, agencies, departments, councils, authorities, offices or officers within any such departments now existing or hereafter established.

“**Custodian of a government record**” or “**custodian**” is the officer officially designated by formal action of the Board of Education.

B. Government Record or Record (N.J.S.A. 47:1A-1.1)

1. Any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business of the Board of Education or that has been received in the course of his or its official business of the Board of Education.
2. A “government record” or “record” does not include inter-agency or intra-agency advisory, consultative, or deliberative material.
3. A “government record” or “record” does not include excluded information as outlined in N.J.S.A. 47:1A-1.1. The excluded information includes, but is not limited to, the following information which is deemed to be confidential as per N.J.S.A. 47:1A-1 et seq.:
 - a. Victims’ records, except that a victim of a crime shall have access to the victim’s own records;
 - b. Trade secrets and proprietary commercial or financial information obtained from any source. Trade secrets include data processing software obtained by the district under a licensing agreement which prohibits its disclosure;
 - c. Any record within the attorney-client privilege. This will not be construed as

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- exempting from access attorney or consultant bills or invoices except that such bills or invoices may be redacted to remove any information protected by the attorney-client privilege;
- d. Administrative or technical information regarding computer hardware, software and networks that, if disclosed, would jeopardize computer security;
 - e. Emergency or security information or procedures for any buildings or facility that, if disclosed, would jeopardize security of the building or facility or persons therein;
 - f. Security measures and surveillance techniques that, if disclosed, would create a risk to the safety of persons, property, electronic data or software;
 - g. Information that, if disclosed, would give an advantage to competitors or bidders;
 - h. Information generated by or on behalf of the Board or Board employees in connection with any sexual harassment complaint filed within the Board or with any grievance filed by or against an individual or in connection with collective negotiations, including documents and statements of strategy or negotiating position;
 - i. Information that is a communication between the district and its insurance carrier, administrative service organization or risk management office;
 - j. Information that is to be kept confidential pursuant to court order;
 - k. That portion of any document which discloses the social security number, credit card number, unlisted telephone number or driver license number of any person; except for use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf thereof, or any private person or entity seeking to enforce payment of court-ordered child support; except with respect to the disclosure of driver information by the Division of Motor Vehicles as permitted by section 2 of P.L. 1997, c. 188 (C.39:2-3.4); and except that a social security number contained in a record required by law to be made, maintained or kept on file by a public agency shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited by State or federal law, regulation or order or by State statute, resolution of either or both houses of the Legislature, Executive

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Order of the Governor, rule of court or regulation promulgated under the authority of any statute or executive order of the Governor; and

- l. Personnel and pension records of an individual, except the individual's name, title of position, salary, payroll record, length of service, date of separation and the reason therefore, the amount and type of pension he/she receives, and data, other than detailed medical or psychological information, that shows conformity with qualifications for employment and pensions;
- m. Test questions, scoring keys and other examinations for employment or for pupil achievement;
- n. Information concerning individual pupil records or information regarding grievance or disciplinary proceedings against a pupil to the extent disclosure would reveal the identity of the pupil; and
- o. All other information as defined in N.J.S.A. 47:1A-1 et seq.

C. Public Right of Inspection, Copies and Fees (N.J.S.A. 47:1A-2 et seq.)

- 1. Except as otherwise provided in N.J.S.A. 47:1A-1 et seq. or by any other statute, resolution of either or both houses of the Legislature, executive order of the Governor, rule of court, any Federal law, regulation or order, or by any regulation promulgated under the authority of any statute or executive order of the Governor, all records which are required by law to be made, maintained or kept on file by the board, or by any official acting for or on behalf thereof will be deemed to be public records. Every citizen of this State, during the regular business hours maintained by the custodian of government records, has the right to inspect such records.
- 2. Every citizen of this State also has the right, during such regular business hours and under the supervision of a representative of the custodian, to copy such records by hand, and will also have the right to purchase copies of such records.
- 3. Copies of records will be made available upon the payment of such price as established below:

[Optional – Maximum Amounts]

First page to tenth page.....\$0.75 per page
Eleventh page to twentieth page.....\$0.50 per page
All pages over 20.....\$0.25 per page

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4. If the custodian finds there is no risk of damage or mutilation of such records and it would not be incompatible with the economic and efficient operation of the office and the transaction of public business therein, the custodian may permit any citizen who is seeking to copy more than 100 pages of records to use his own photographic process. The process must be approved by the custodian, upon the payment of a reasonable fee, considering the equipment and the time involved, to be fixed by the custodian at \$50.00.

D. Records of Investigation In Progress (N.J.S.A. 47:1A-3 et seq.)

1. Notwithstanding the provisions of N.J.S.A. 47:1A:1 et seq., where it appears the record or records which are sought to be inspected, copied, or examined pertain to an investigation in progress by the Board and/or administration:
 - a. The right to inspection, copying and/or examination may be denied if the inspection, copying or publication of such record or records will be inimical/detrimental to the public interest. This provision will not be construed to prohibit the Board and/or custodian from opening such record or records if not otherwise prohibited by law or to prohibit access to a record that was open for public inspection, examination, or copying before the investigation commenced; and
 - b. If the Board, during the course of an investigation, obtains from another public agency a government record that was open for public inspection, examination or copying before the investigation commenced, the Board will provide the other agency with sufficient access to the record to allow the other agency to comply with requests made pursuant to N.J.S.A. 47:1A-1 et. seq.
2. Notwithstanding the provisions of N.J.S.A. 47:1A-1 et seq., the information concerning a criminal investigation will be available to the public in accordance with N.J.S.A. 47:1A-3.b.

E. Inspection, Examination and Copying (N.J.S.A. 47:1A-5 et seq.)

1. The custodian will permit the record to be inspected, examined, and copied by any person during regular business hours. In the case of a board of education having a total district enrollment of 500 or fewer the custodian will permit the records to be inspected, examined and copied during not less than six regular business hours over not less than three business days per week or the entity's regularly-scheduled business hours, whichever is less, unless the government record is exempt from public access as per N.J.S.A. 47:1A-5.a.

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2. Prior to allowing access to any government record, the custodian will redact from that record any information which discloses the social security number, credit card number, unlisted telephone number, or driver license number of any person, except:
 - a. If the record is being used by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf thereof, or any private person or entity seeking to enforce payment of court-ordered child support;
 - b. With respect to the disclosure of driver information by the Division of Motor Vehicles as permitted by section 2 of P.L.1997, c. 188 (C.39:2-3.4);
 - c. That a social security number contained in a record required by law to be made, maintained or kept on file by a public agency shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited by State or federal law, regulation or order or by State statute, resolution of either or both houses of the Legislature, Executive Order of the Governor, rule of court or regulation promulgated under the authority of any statute or executive order of the Governor; and
 - d. Where an agency can demonstrate an emergent need, a regulation that limits access to government records shall not be retroactive in effect or applied to deny a request for access to a government record that is pending before the agency, the council or a court at the time of the adoption of the regulation.

F. Copy Purchase (N.J.S.A. 47:1A-5 et seq.)

1. If the custodian can demonstrate that its actual costs for duplication of a government record exceed the board approved rates, the district is permitted to charge the actual cost of duplicating the record.
2. Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this Regulation is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the district may charge, in addition to the actual cost of duplicating the record, a special service charge that will be reasonable and will be based upon the actual direct cost of providing the copy or copies. The custodian will provide the

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requestor an opportunity to review and object to the charge prior to it being incurred.

3. A custodian will permit access to a government record and provide a copy thereof in the medium requested if the district maintains the record in that medium. If the district does not maintain the record in the medium requested, the custodian will either convert the record to the medium requested or provide a copy in some other meaningful medium.
4. If a request is for a record in a medium not routinely used by the district; not routinely developed or maintained by an agency or requiring a substantial amount of manipulation or programming of information technology, the district may charge, in addition to the actual cost of duplication, a special charge that will be reasonable and based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the district or attributable to the district for the programming, clerical, and supervisory assistance required, or both.
5. Immediate access ordinarily will be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.
6. The custodian will adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. The form will provide:
 - a. Space for the name, address, and phone number of the requestor and a brief description of the government record sought;
 - b. Space for the custodian to indicate which record will be made available, when the record will be available, and the fees to be charged;
 - c. Specific directions and procedures for requesting a record;
 - d. A statement as to whether prepayment of fees or a deposit is required;
 - e. The time period within which the public agency is required by N.J.S.A. 47:1A-1 et seq. to make the record available;
 - f. A statement of the requestor's right to challenge a decision to deny access and the procedure for filing an appeal;

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- g. Space for the custodian to list reasons if a request is denied in whole or in part;
 - h. Space for the requestor to sign and date the form; and
 - i. Space for the custodian to sign and date the form if the request is fulfilled or denied.
- 7. The custodian may require a deposit against costs for reproducing documents sought through an anonymous request whenever the custodian anticipates that the information thus requested will cost in excess of \$5.00 to reproduce.
- 8. Request for access to a government record will be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian.
- 9. The custodian will promptly comply with a request to inspect, examine, copy, or provide a copy of a government record.
- 10. If the custodian is unable to comply with a request for access, the custodian will indicate the specific basis therefore on the request form and promptly return it to the requestor.
- 11. The custodian will sign and date the form and provide the requestor with a copy thereof.
- 12. If the custodian asserts that part of a particular record is exempt from public access pursuant to N.J.S.A. 47:1A-1 et seq. the custodian will delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record.
- 13. If the government record requested is temporarily unavailable because it is in use or in storage, the custodian will advise the requestor and will make arrangements to promptly make available a copy of the record.
- 14. If a request for access to a government record would substantially disrupt school district operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the district.

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15. Any officer or employee of the district who receives a request for access to a government record will forward the request to the custodian of the record or direct the requestor to the custodian of the record.
16. Unless a shorter time period is otherwise provided by statute, regulation, or executive order, the custodian will grant access to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after receiving the request, provided that the record is currently available and not in storage or archived.
 - a. In the event the custodian fails to respond within seven business days after receiving a request, the failure to respond will be deemed a denial of the request, unless the requestor has elected not to provide a name, address or telephone number, or other means of contacting the requestor.
 - b. If the requestor has elected not to provide a name, address, or telephone number, or other means of contacting the requestor, the custodian will not be required to respond until the requestor reappears before the custodian seeking a response to the original request.
 - c. If the government record is in storage or archived, the requestor will be so advised within seven business days after the custodian receives the request. The requestor will be advised by the custodian when the record can be made available. If the record is not made available by that time, access shall be deemed denied.
17. A custodian will post prominently in public view in the part or parts of the office or offices of the custodian that are open to or frequented by the public a statement that sets forth in clear, concise and specific terms the right to appeal a denial of, or failure to provide, access to a government record by any person for inspection, examination, or copying or for purchase of copies thereof and the procedure by which an appeal may be filed.

G. Challenge to Access Upon Denial (N.J.S.A. 47:1A-6)

1. A person who is denied access to a government record by the custodian, at the option of the requestor, may:
 - a. Institute a proceeding to challenge the custodian's decision by filing an action in Superior Court; or

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- b. In lieu of filing an action in Superior Court, file a complaint with the Government Records Council established pursuant to section 8 of P.L.2001, c. 404 (C.47:1A-7).
2. The right to institute any proceeding under this section will be solely that of the requestor. Any such proceeding shall proceed in a summary or expedited manner. The Board will have the burden of proving that the denial of access is authorized by law. If it is determined that access has been improperly denied, the court or agency head shall order that access be allowed. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

H. Government Records Council (N.J.S.A. 47:1A-7 et seq.)

The Board and the custodian of records will comply with the requirements and guidelines from the Government Records Council in accordance with N.J.S.A. 47:1A-7.

I. Common Right Law Right of Access (N.J.S.A. 47:1A-8 et seq.)

Nothing contained in N.J.S.A. 47:1A-1 et seq. will be construed as limiting the common law right of access to a government record, including criminal investigative records of a law enforcement agency.

J. Construction with Other Laws (N.J.S.A. 47-1A-9 et seq.)

1. The provisions of this Regulation and N.J.S.A. 47:1A-1 et seq. will not abrogate any exemption of a public record or government record from public access heretofore made pursuant to N.J.S.A. 47:1A-1 et seq.; any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.
2. The provisions of this Regulation and N.J.S.A. 47:1A-1 et seq. will not abrogate or erode any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.

Date Adopted: 3/03
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