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**Technical Correction - Volume 35, No. 2 - July 2023**

**8310 - PUBLIC RECORDS**

The Board of Managers recognizes its responsibility to maintain and protect the public records of the Board and to make these records available for inspection and the purchase of copies in compliance with the Indiana Access to Public Records Act, I.C. 5-14-3-4 ("APRA").

**"Public Records" Defined and Mandatory and Discretionary Exemptions**

The public records of this Board are those records that are created, received, retained, maintained, or filed with the board or its officers, employees, or agents in any form including on paper and in any computer readable media. Certain records covered by this definition ~~must~~ shall be maintained as confidential records pursuant to I.C. 5-14-3-4(a) unless production is ordered by a court under the rules of pre-trial discovery, while other records covered by this definition are subject to a discretionary exemption listed in I.C. 5-14-3-4(b).

**Protection of Public Records**

A person who recklessly, knowingly, or intentionally destroys or damages any public record commits a ~~Class D~~ Level 6 felony in violation of I.C. 5-15-6-8. Public records may be destroyed when the Johnson County Commission on Public Records created pursuant to I.C. 5-15-6 has given written approval for the destruction of the record, or authority for destruction of the records is addressed by a retention schedule established and approved under I.C. 5-15-6.

**Protection of Confidential Information in Public Records**

As used in this policy, the term "redact" means to black out or cover with a permanent opaque material so that the content cannot be read. Where redaction is necessary, sufficient content shall be redacted so that the redacted content cannot be identified from the context.

The Board directs the Director and ~~Board~~ Cooperative employees having custody and supervision over public records to protect the confidentiality of records that are not to be disclosed under I.C. 5-14-3-4(a). This includes a person's Social Security Account Number ("SSAN") which shall be redacted from any public record released unless the SSAN is specifically required to be disclosed by a State or a Federal law or is ordered by a court under the rules of discovery.

Other information that ~~must~~ shall be kept confidential includes personally identifiable information about a student protected by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g and 34 CFR Part 99, medical or genetic information about an employee, and information containing a trade secret as defined in I.C. 24-2-3-2.

**Authorization to Assert Mandatory and Discretionary Exemptions**

Given the time limitations established for compliance with a response to a request for records under the APRA, the Board directs the Director to assert any exemption required to protect information that ~~must~~ shall be kept confidential pursuant to I.C. 5-14-3-4(a); and the Board authorizes the Director to assert any discretionary exemption to the APRA found in I.C. 5-14-3-4(b) including:

records that are intra-agency or inter-agency advisory or deliberative material; diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal; files of applicants for ~~Board~~ Cooperative employment, and personnel files of ~~Board~~ Cooperative employees, except that the following information from personnel files ~~must~~ shall be disclosed:

- A. the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the ~~Board~~ Cooperative;
- B. information relating to the status of any formal charges against a ~~Board~~ Cooperative employee; and
- C. the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

If personnel file information about a current or former employee is disclosed, the current or former employee shall be advised of the release of the information from their personnel file and a description of the released information.

#### **Limited Access to Requests for Lists of Persons**

Notwithstanding any other provisions of law or this policy, in compliance with I.C. 5-14-3-4(f), the Board ~~will~~ shall not create a new list or provide a copy of an existing list that includes the names and addresses of persons (including e-mail addresses) in response to a request unless the Board is required by law to publish and disseminate the list to the public.

However, if the Board has created a list of names and addresses of persons, it ~~will~~ shall permit a person to inspect and make memoranda abstracts from the list, excluding e-mail addresses unless access to the list is prohibited by law.

#### **[ ] OPTIONAL [NOTE: The section below is optional.]**

#### **Requests for Lists of Employees or Students for Commercial or Political Purposes**

~~When a list of employees and/or students is requested from the Cooperative, notwithstanding the general prohibition of asking a requesting party for the purpose of their request, the requesting party will shall be required to disclose the proposed use of the list in writing, before their request is considered.~~

If the request is for:

- ~~J a list of all employees of the Board Cooperative, the employees in a particular school, a particular program, or classification of employee;~~
- ~~I a list of persons attending conferences or meetings at a state educational institution or of persons involved in programs or activities conducted or supervised by the state educational institution;~~
- ~~C a list of students who are enrolled in the Cooperative, or sorted by any criterion or criteria.~~

~~and the proposed use of the list is for political or commercial purposes, the request shall be denied (see I.C. 5-14-3-3(f)).~~

~~For purposes of this policy, "political purposes" means influencing the election of a candidate for federal, state, Federal, State, legislative, local, or school board office or the outcome of a public question, or attempting to solicit a contribution to influence the election of a candidate for federal, state, legislative, local, or school board office or the outcome of a public question and "commercial purposes" means promotion of a product or service available from a business.~~

~~If all or any portion of a list of employees or student is disclosed, the party receiving the list shall be required to agree in writing that as a condition of release of the information, any information provided to them will shall not be used for political or commercial purposes. A person or entity that violates such a written agreement and any person or entity that used a list obtained through them shall not be eligible to receive lists of persons through the Board in the future. The Director is directed to provide for consistent and uniform enforcement of this prohibition among all similarly situated commercial and political entities.~~

#### **[NOTE: End of optional section.]**

#### **Lists of Students for Use by Official Recruiting Representative of Armed Forces**

Notwithstanding any policy to the contrary, a request for a list containing "directory information" as defined at I.C. 20-33-10-3 and the Family Educational Rights and Privacy Act ("FERPA") from an official recruiting representative of ~~an~~ one of the armed ~~force~~ forces of the United States pursuant to I.C. 20-33-10 and/or 9528 of the ESEA (20 U.S.C. 7908), as amended by the No Child Left Behind Act of 2001 (P.L. No. 107-110), shall not be denied. However, an official recruiting representative may be required to pay a fee that represents the actual costs of copying and mailing the student directory information to the recruiter.

This information shall not be provided if a high school student or the parent of a high school student submits a signed, written request at the end of the student's sophomore year that states that the student or the parent of the student does not want the student's directory information to be provided to official recruiting representatives of the armed forces of the United States. Notice of the right to object to the release of student directory information generally under FERPA, and to official recruiting representatives of the armed forces of the United States, specifically, shall be provided in annual notices given to all high school students and their parents, guardian, or custodian.

A request to inspect and/or purchase copies of a public record in the custody of the Board may be submitted orally during the regular business hours in the office in which such records are maintained. A written request to inspect and make notes from public records in the custody of the Board may be submitted by e-mail, facsimile, or USPS mail. Such a request submitted outside of the regular business hours in the office in which such records are maintained shall be deemed received at the beginning of the next regularly scheduled work day in that office.

A requesting party shall be required to describe the records sought with reasonable particularity.

The ~~Board~~ Cooperative Public Access Officer ("PAO") designated by the Director or a ~~Board~~ Cooperative employee acting at the discretion of the PAO ~~will~~ shall advise the requesting party whether any records specified in the request are available for inspection and copying. When the person making the request is physically present in a ~~Board~~ Cooperative office, makes the request by telephone, or requests enhanced access to a record, a denial of disclosure occurs at the earlier of the time an employee of the ~~Board~~ Cooperative refuses to permit inspection and copying of the requested record; or twenty-four (24) hours elapse after the request is received. When a request is made by mail, e-mail, or by facsimile, a denial of the request occurs at the earlier of the time a ~~Board~~ Cooperative employee refuses to permit inspection and copying of the requested record or when seven (7) days have elapsed from the date the request was received by the Cooperative.

The initial response to a request required by these time limitations does not need to be the final response of the Board to a request, but the initial response shall at least acknowledge receipt of the request and provide an initial assessment of the existence of records covered by the request. In preparing a final response of the Board following the initial response, the PAO shall comply with I.C. 5-14-3- 7 and shall take into account the other duties to be performed by ~~Board~~ Cooperative employees with custody of the requested record and shall not cause or permit a material interference with the regular discharge of the other functions or duties of the Cooperative or its employees.

### Enhanced Access to Cooperative Records

~~[NOTE: Choose Option #1 or Option #2.]~~

#### ~~[ ] Option #1~~

~~As used in this policy, "enhanced access" means the inspection of a public record by a person other than a governmental entity by means of an electronic device other than an electronic device provided by the Cooperative, or requires the compilation or creation of a list or report that does not result in the permanent electronic storage of the information.~~

~~The Board authorizes the Director to provide enhanced access to any public record the Board Cooperative has stored in an electronic database that is not confidential or exempt from disclosure. Enhanced access may be provided by means of copying on to an electronic data storage device a transmission attached to an e-mail or direct access to the Board Cooperative network through a temporary and limited access portal.~~

~~The Director shall establish a fee for enhanced access that does not exceed the Cooperative's "direct cost", i.e. one hundred five percent (105%) of the sum of: the initial development of a program, if any, the labor required to retrieve electronically stored data and any medium used for electronic output for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval.~~

~~[END OF OPTION # 1]~~

#### Option #2

In order to assure the integrity of the data maintained on the Cooperative's computer network, and protect the confidentiality of protected information maintained by the Cooperative, the Board ~~will~~ shall not authorize enhanced access to public records on its computer network. However, records that are not confidential may be viewed by a requesting party in paper form printed out for inspection on paper by the PAO or a ~~Board~~ Cooperative employee acting at the direction of the PAO.

~~[END OF OPTION # 2]~~

### Fees for Purchasing Copies of Public Records

~~Board~~ Cooperative public records may be inspected without charge. Purchase of copies of public records may be made upon payment of a fee. The Board establishes the following fee schedule for purchase of a copy of public records. These fees ~~will~~ shall be uniform for all purchasers.

Copies shall be prepared by a Cooperative employee and provided to a requesting party upon payment of a fee which is the greater of:

- A. \$.10 per page for copies that are not color copies or \$.25 per page for color copies; or
- B. the actual cost of copying the document.

"Actual cost" means the cost of paper and the per-page cost for use of copying or facsimile equipment and does not include labor costs or overhead costs.

Certification of document as a true and accurate copy of an original record in the custody of the Cooperative, \$5.00.

**Other**

The Board ~~will~~ shall charge a fee for providing a duplicate of a computer tape, computer ~~disk~~ disk, microfilm, or similar or analogous record system containing a public record in the custody of the Cooperative. The fee shall not exceed the sum of the:

- A. the Cooperative's direct cost of supplying the information in that form; and
- B. the standard cost of selling the same information to the public in the form of a publication if the Cooperative has published the information and made the publication available for sale.

**[x ]** In response to a request for public records, the Board shall charge a fee for any time spent searching records that are in electronic format when the search exceeds five (5) hours. There ~~will~~ shall be no charge for the first five (5) hours of a search. The fee for time beyond the first five (5) hours shall be the lesser of: 1) the hourly rate of the person making the search; or 2) \$20 per hour. This hourly fee for searching for records in an electronic format applies only to time the person making the search actually spends searching the records in electronic format. No minimum fee shall be established. School personnel doing an electronic search in response to a request for public records ~~will~~ shall make a good faith effort to complete the search within a reasonable time in order to minimize the amount of the search fee. Any fee charged shall be prorated to reflect any part of the search which is less than a full hour. No charge ~~will~~ shall be made for "computer processing time." "Computer processing time" is defined as the amount of time a computer takes to process a command or script to extract or copy electronically stored data that is the subject of a public records request.

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Legal                      I.C. 5-14-3  
                                  I.C. 5-15-6  
                                  I.C. 20-33-10