

No. 801 AR

INTERMEDIATE UNIT

ADMINISTRATIVE  
REGULATION

DATE: 11/20/08

### 801 AR. EXEMPTED RECORDS

To determine if a requested record is exempt from access, the Open Records Officer will consider and apply each exemption separately.

The following records are exempt from public access by a requester in accordance with the Right-To-Know Law.

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 personal security of, an individual.
2. **Public Safety** - when the disclosure of a record maintained in connection with the military, homeland security, national defense, law enforcement, or other public safety activity would reasonably be likely to jeopardize or threaten public safety 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 or 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 Infrastructures Protections Act, 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.

## 801 AR. EXEMPTED RECORDS

- 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 systems.
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, to include 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 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 Intermediate Unit 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.

## 801 AR. EXEMPTED RECORDS

- 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 shall 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 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 hearing.
- 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. **Pre-decisional Drafts** - disclosure of the draft of a resolution, regulation, statement of policy, management directive, or their amendments prepared by or for the Intermediate Unit.
10. **Pre-decisional Deliberations** - disclosure of a record that reflects:
- a. The internal, pre-decisional deliberations of the Intermediate Unit, its Board members, employees or officials, or pre-decisional deliberations between Intermediate Unit Board members, employees or officials and members, employees or officials of another agency, including pre-decisional deliberations relating to a budget recommendation; contemplated or proposed policy or course of action; or any research, memos, or other documents used in the pre-decisional 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

## 801 AR. EXEMPTED RECORDS

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 or policy proposal.
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 an 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 and answers to examinations, including licensing and other examinations relating to the qualifications of an individual; examinations given in Intermediate Unit programs; 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 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.

## 801-AR. EXEMPTED RECORDS

- f. A record that if disclosed would reveal the institution, progress, or result of a criminal investigation, except the filing of criminal charges; deprive an individual 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 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. **Non-criminal Investigations** - 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 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, unless the agency or a court determines that the public interest in disclosure 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.

## 801-AR. EXEMPTED RECORDS

21. **Draft Minutes** - disclosure of draft minutes of any Board meeting until the next regularly scheduled Board meeting, minutes of an executive session, and any record of discussions held in executive session.
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 groups 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 offerer requested in an invitation for bid or request for proposals to demonstrate the bidder's or offerer'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 identifying an individual who applies for or receives social services, the type of social services received by an individual, an individual's application to receive social services, or eligibility to receive social services.

## 801-AR. EXEMPTED RECORDS

29. **General Assembly Correspondence** - disclosure of correspondence between an individual and member of the General Assembly and records accompanying the correspondence that would identify an individual requesting assistance or constituent services, except for correspondence between a member of the General Assembly and a principal or lobbyist under law.
30. **Minors** - disclosure of a record identifying the name, home address or date of birth of a child seventeen (17) years of age or younger.

### **Financial Records**

The listed exemptions do not apply to financial records, except that the Open Records Officer shall redact the portions of a financial record protected under exemptions 1, 2, 3, 4, 5, 6, 16 or 17.

### **Aggregated Data**

The listed exemptions do not apply to aggregated data maintained or received by the Intermediate Unit, except for data protected under exemptions 1, 2, 3, 4 or 5.

### **Law Enforcement Activity**

The Open Records Officer will not disclose the identity of an individual performing an undercover or covert law enforcement activity.