

INTERMEDIATE UNIT

ADMINISTRATIVE  
REGULATION

DATE: 11/20/08

801 AR1. DISCLOSURE/PRODUCTION OF CERTAIN RECORDS

The Open Records Officer will respond within five (5) business days to a request for access to a public record.

The Open Records Officer shall maintain copies of the Intermediate Unit's written responses to records requests in compliance with law and the BCIU's Records Management policy and procedures.

Extension Of Time

Upon receipt of a written request for access, the Open Records Officer will determine if any one (1) 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 records request, the requester will be notified in writing, in accordance with law and Board policy.

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### 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.

### 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 law, Board policy, and administrative regulations.

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.

### 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 an 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.

### Trade Secrets/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.

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**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 position 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.

### Computer Access

The Open Records Officer will not grant requests for access to the Intermediate Unit's or its employees' computers.

### 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 the attorney-work product doctrine; 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.