

# BERKS COUNTY INTERMEDIATE UNIT

SECTION: OPERATIONS

TITLE: PUBLIC RECORDS

ADOPTED: February 17, 1994

REVISED: November 20, 2008

<p>1. Purpose</p> <p>2. Definitions 65 P.S. Sec. 67.102</p>	<p style="text-align: center;">801. PUBLIC RECORDS</p> <p>The Board recognizes the importance of public records as the record of the Intermediate Unit’s actions and the repository of information about this Intermediate Unit. The public has the right to access and procure copies of public records, with certain exceptions, subject to law, Board policy, and administrative regulations.</p> <p><b>Business Day</b> – Shall Mean A Calendar Day In Which The Administrative Office Of The Intermediate Unit Is Open For Business And Does Not Include Any Work Day Where The Administrative Offices Are Closed Due To Inclement Weather, Holidays, Or Emergencies.</p> <p><b>Financial record</b> - any account, voucher or contract dealing with the receipt or disbursement of funds or the acquisition, use, or disposal of services, supplies, materials, equipment or property; or the salary or other payments or expenses paid to an officer or employee, including the individual’s name and title; and a financial audit report, excluding the audit’s underlying work papers.</p> <p><b>Public record</b> - a record, including a financial record, which is not protected by a defined privilege or is not exempt from disclosure under one of the exemptions in Pennsylvania’s Right-to-Know Law or under other federal or state law or regulation, or judicial decree or order.</p> <p><b>Record</b> - information, regardless of physical form or characteristics, that documents an Intermediate Unit transaction or activity and is created, received, or retained pursuant to law or in connection with an Intermediate Unit transaction, business, or activity, including: a document, paper, letter, map, book, tape, photograph, film or sound recording; information stored or maintained electronically; and a data-processed or image-processed document.</p> <p><b>Response</b> - the Intermediate Unit’s granting of access to a record or the Intermediate Unit’s written notice to a requester granting, denying, or partially granting and partially denying access to a requested record.</p> <p><b>Requester</b> - a legal resident of the United States, or an agency, who requests access to a record.</p>
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<p>3. Authority 65 P.S. Sec. 67.302, 67.305, 67.504, 67.701</p>	<p>The Board shall make the Intermediate Unit’s public records available for access and duplication to a requester, in accordance with law, Board policy, and administrative regulations.</p>
<p>4. Delegation of Responsibility 65 P.S. Sec. 67.502</p>	<p>The Board shall designate an Open Records Officer, who shall be responsible to:</p> <ol style="list-style-type: none"> <li>1. Receive written requests for access to records submitted to the Intermediate Unit.</li> <li>2. Review and respond to written requests in accordance with law, Board policy, and administrative regulations.</li> <li>3. Direct requests to other appropriate individuals in the Intermediate Unit or in another agency.</li> <li>4. Track the Intermediate Unit’s progress in responding to requests.</li> <li>5. Issue interim and final responses to submitted requests.</li> <li>6. Maintain a log of all record requests and their disposition.</li> <li>7. Ensure Intermediate Unit staff is trained to perform assigned job functions relative to requests for access to records.</li> </ol>
<p>5. Guidelines 65 P.S. Sec. 67.701</p> <p>65 P.S. Sec. 67.302</p> <p>65 P.S. Sec. 67.705</p> <p>42 U.S.C. Sec. 12132 28 CFR Sec. 35.160, 35.164</p>	<p>Requesters may access and procure copies of the public records of the Intermediate Unit at and during the regular business hours of the administration offices.</p> <p>A requester’s right of access does not include the right to remove a record from the control or supervision of the Open Records Officer.</p> <p>The Intermediate Unit shall not limit the number of records requested.</p> <p>When responding to a request for access, the Intermediate Unit is not required to create a record that does not exist nor to compile, maintain, format, or organize a record in a manner, which the Intermediate Unit does not currently use.</p> <p>Information shall be made available to individuals with disabilities in an appropriate format, upon request and with sufficient advance notice.</p>

<p>65 P.S. Sec. 67.504, 67.505</p>	<p>The Intermediate Unit shall post at the administration office and on the Intermediate Unit’s web site, if the Intermediate Unit maintains a web site, the following information:</p> <ol style="list-style-type: none"> <li>1. Contact information for the Open Records Officer.</li> <li>2. Contact information for the state’s Office of Open Records or other applicable appeals officer.</li> <li>3. The form to be used to file a request, with a notation that the state Office of Open Records form may also be used if the Intermediate Unit decides to create its own form.</li> <li>4. Board policy, administrative regulations, and procedures governing requests for access to the Intermediate Unit’s public records.</li> </ol>
<p>65 P.S. Sec. 67.504, 67.505, 67.703</p>	<p><b><u>Request For Access</u></b></p> <p>A written request for access to a public record shall be submitted on the required form(s) and addressed to the Open Records Officer.</p> <p>Written requests may be submitted to the Intermediate Unit in person, by mail, to a designated facsimile machine, or to a designated e-mail address.</p>
<p>65 P.S. Sec. 67.701, 67.703</p>	<p>Each request must include the following information:</p> <ol style="list-style-type: none"> <li>1. Identification or description of the requested record, in sufficient detail.</li> <li>2. Medium in which the record is requested.</li> <li>3. Name and address of the individual to receive the Intermediate Unit’s response.</li> </ol>
<p>65 P.S. Sec. 67.703</p>	<p>The Intermediate Unit shall not require an explanation of the reason for the request or the intended use of the requested record, unless otherwise required by law.</p>
<p>65 P.S. Sec. 67.506</p>	<p><b>Agency Discretion:</b> The Intermediate Unit may exercise its discretion to make any otherwise exempt record accessible for inspection and copying under this policy, if all of the following apply: (i) disclosure of the record is not prohibited under any federal or state law or regulation or judicial order or decree; (ii) the record is not protected by a privilege; and (iii) the Executive Director determines that the public interest favoring access outweighs any individual, agency, or public interest that may favor restriction of access.</p>
<p>65 P.S.</p>	<p><b>Records Possessed by a Third Party:</b> A public record that the Intermediate Unit</p>

Sec. 67.506	<p>does not possess but is possessed by a third party with whom the Intermediate Unit has contracted to perform a governmental function and which directly relates to that governmental function shall be considered a public record of the Intermediate Unit. When the Intermediate Unit contracts with such a third party, the Intermediate Unit shall require the contractor to agree in writing to comply with requests for such records and to provide the Intermediate Unit with the requested record in a timely manner to allow the Intermediate Unit to comply with law.</p>
<p>65 P.S. Sec. 67.507; Board Pol. 800</p>	<p><b>Retention of Records:</b> Nothing in this policy shall be construed to modify, rescind, or supersede the Intermediate Unit's Records Management Policy and its accompanying administrative regulations and retention/disposition schedules.</p>
<p>65 P.S. Sec. 67.1307</p>	<p><b><u>Fees</u></b></p> <p>Except For The Duplication Fee Established By The State, The Board Shall Approve A List Of Reasonable Fees Relative To Requests For Public Records. The Intermediate Unit Shall Maintain A List Of Applicable Fees And Disseminate The List To Requesters.</p>
<p>65 P.S. Sec. 67.1307</p>	<p>No fee may be imposed for review of a record to determine whether the record is subject to access under law.</p>
<p>65 P.S. Sec. 67.1307</p>	<p>Prior to granting access, the Intermediate Unit may require prepayment of estimated fees when the fees required to fulfill the request are expected to exceed one hundred dollars (\$100.00).</p>
<p>65 P.S. Sec. 67.1307</p>	<p>The Executive Director may waive duplication fees when the requester duplicates the record or the Executive Director deems it is in the public interest to do so.</p>
<p>65 P.S. Sec. 67.502, 67.702</p>	<p><b><u>Response To Requests</u></b></p> <p>Intermediate Unit employees shall be directed to immediately forward requests for access to public records to the Open Records Officer.</p>
<p>65 P.S. Sec. 67.901</p>	<p>Upon receipt of a written request for access to a record, the Open Records Officer shall determine if the requested record is a public record and if the Intermediate Unit has possession, custody, or control of that record.</p>
<p>65 P.S. Sec. 67.901</p>	<p>The Open Records Officer shall respond as promptly as possible under the existing circumstances, and the initial response time shall not exceed five (5) business days from the date the written request is received by the Open Records Officer.</p> <p>The initial response shall grant access to the requested record; deny access to the requested record; partially grant and partially deny access to the requested record;</p>

<p>65 P.S. Sec. 67.901</p>	<p>notify the requester of the need for an extension of time to fully respond; or request more detail from the requester to clearly identify the requested material.</p> <p>If the Intermediate Unit fails to respond to a request within five (5) business days of receipt, the request for access shall be deemed denied.</p> <p><b><u>Extension Of Time</u></b></p>
<p>65 P.S. Sec. 67.901, 67.902</p>	<p>If the Open Records Officer determines that an extension of time is required to respond to a request in accordance with the factors stated in law, written notice shall be sent within five (5) business days of receipt of request. The notice shall indicate that the request for access is being reviewed, the reason that the review requires an extension, a reasonable date when the response is expected, and an estimate of applicable fees owed when the record becomes available.</p> <p>Up to a thirty (30)-day extension for one (1) of the listed reasons does not require the consent of the requester. If the response is not given by the specified date, it shall be deemed denied on the day following that date.</p> <p>A requester may consent in writing to an extension that exceeds thirty (30) days, in which case the request shall be deemed denied on the day following the date specified in the notice if the Open Records Officer has not provided a response by that date.</p> <p><b><u>Granting Of Request</u></b></p>
<p>65 P.S. Sec. 67.701</p>	<p>A public record shall be provided to the requester in the medium requested if it exists in that form; otherwise, it shall be provided in its existing medium. However, the Intermediate Unit is not required to permit access to its computers.</p>
<p>65 P.S. Sec. 67.701, 67.704</p>	<p>The Open Records Officer may respond to a records request by notifying the requester that the record is available through publicly accessible electronic means or that the Intermediate Unit shall provide access to inspect the record electronically. If the requester, within thirty (30) days following receipt of the Intermediate Unit's notice, submits a written request to have the record converted to paper, the Intermediate Unit shall provide access in printed form within five (5) days of receipt of the request for conversion to paper.</p>
<p>65 P.S. Sec. 67.706</p>	<p><b>Obligation to Redact:</b> If the Open Records Officer determines that a public record contains information both subject to and not subject to access, the Open Records Officer shall grant access to the information subject to access and deny access to the information not subject to access. The Open Records Officer shall redact from the record the information that is not subject to access. The Open Records Officer shall not deny access to a record if information can be redacted.</p>

<p>65 P.S. Sec. 67.905</p>	<p><b>Record Discard:</b> If the Open Records Officer responds to a requester that a copy of the requested record is available for delivery at the administration office and the requester does not retrieve the record within sixty (60) days of the response, the Intermediate Unit shall dispose of the copy and retain any fees paid to date.</p>
<p>65 P.S. Sec. 67.707</p>	<p><b><u>Notification To Third Parties</u></b></p> <p>When the Intermediate Unit produces a record that is not a public record in response to a request, the Open Records Officer shall notify any third party that provided the record to the Intermediate Unit, the person that is the subject of the record, and the requester.</p>
<p>65 P.S. Sec. 67.707</p>	<p><b>Requests for Trade Secrets:</b> The Open Records Officer shall notify a third party of a record request if the requested record contains a trade secret or confidential proprietary information provided that the third party provided the record and included a written statement by a representative of the third party that the record contains a trade secret or confidential proprietary information. Notification to the third party shall be provided within five (5) business days of receipt of the request for the record, and the third party shall have five (5) business days from receipt of such notification to provide input on the release of the record. The Intermediate Unit shall either deny the request for the record or release the same within ten (10) business days of the provision of notice to the third party and shall notify the third party of that decision.</p>
<p>65 P.S. Sec. 67.901, 67.903</p>	<p><b><u>Denial Of Request</u></b></p> <p>If the Open Records Officer denies a request for access to a record, whether in whole or in part, a written response shall be sent within five (5) business days of receipt of the request. The response denying the request shall include the following:</p> <ol style="list-style-type: none"> <li>1. Description of the record requested.</li> <li>2. Specific reasons for denial, including a citation of supporting legal authority.</li> <li>3. Name, title, business address, business telephone number, and signature of the Open Records Officer on whose authority the denial is issued.</li> <li>4. Date of the response.</li> <li>5. Procedure for the requester to appeal a denial of access.</li> </ol>
<p>65 P.S. Sec. 67.506</p>	<p>The Open Records Officer may deny a request for access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the Intermediate Unit.</p>

<p>65 P.S. Sec. 67.506</p>	<p>The Open Records Officer may deny a request for access to a record when timely access is not possible due to a disaster, or when access may cause physical damage or irreparable harm to the record. To the extent possible, a record's contents shall be made accessible even when the record is physically unavailable.</p>
<p>65 P.S. Sec. 67.706, 67.903</p>	<p>Information that is not subject to access and is redacted from a public record shall be deemed a denial.</p>
<p>65 P.S. Sec. 67.1101</p>	<p><b><u>Appeal of Agency Determination</u></b></p> <p>If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the state's Office of Open Records within fifteen (15) business days of the mailing date of the Open Records Officer's response or deemed denial.</p> <p>References:</p> <p>School Code – 24 P.S. Sec. 408, 518</p> <p>Right-to-Know Law – 65 P.S. Sec. 67.101 et seq.</p> <p>Americans With Disabilities Act – 42 U.S.C. Sec. 12101 et seq.</p> <p>Accessibility to Communications, Title 28, Code of Federal Regulations – 28 CFR Sec. 35.160, 35.164</p> <p>Board Policy – 800</p>