

**Monroe 2-Orleans BOCES Regulation
Series 2000 – Community Relations
Regulation #2310R – PUBLIC ACCESS TO RECORDS**

Purpose and Scope

- 1) The people's right to know the process of government decision-making and the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.
- 2) These regulations provide information concerning the procedures by which records may be obtained from an agency as defined by subdivision three of Section eighty-six of the Public Officers Law. No BOCES regulations shall be more restrictive than this Part.
- 3) The BOCES Records Access Officer shall furnish to the public the information and records required by the Freedom of Information Law, as well as records otherwise available by other applicable law.
- 4) Any conflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records.
- 5) The BOCES shall amend existing regulations or adopt new regulations to implement the Freedom of Information Law in conformity with any amendments to this law.

Designation of Records Access Officer

- 1) The Board shall be responsible for insuring compliance with the regulations herein, and shall designate one person as Records Access Officer at the annual reorganizational meeting by name or by specific job title and business address, who shall have the duty of BOCES response to public requests for access to records.
- 2) The Records Access Officer is responsible to:
 - a. Maintain an up-to-date subject matter list;
 - b. Assist the requester in identifying requested records, if necessary;
 - c. Upon locating the records, take one of the following actions:
 - (1) Make records available for inspection;
 - (2) Deny access to the records in whole or in part and explain in writing the reasons therefore; or
 - (3) Furnish a written acknowledgment of receipt of the request and a statement of the approximate date when such request will be granted or denied.
 - d. Upon payment of, or offer to pay, the established fee (if applicable):

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- (1) Provide copies of records on the medium requested by a person, if the BOCES can reasonably make such copy or have such copy made by engaging an outside professional service. Records provided in a computer format shall not be encrypted;
 - (2) Upon request, certify that a record is a true copy;
- e. Upon failure to locate records, certify that:
- (1) The BOCES is not the custodian for such records, or
 - (2) The records cannot be found after diligent search.
- f. A BOCES shall not enter into or renew a contract for the creation or maintenance of records if such contract impairs the right of the public to inspect or copy the agency's records.

Subject Matter List

The BOCES will maintain a reasonably detailed current list by subject matter of all records in its possession, whether or not available pursuant to the Freedom of Information Law.

Requests for Public Access to Records.

The Board designates the Educational Services Center as the location where records shall be available for public inspection and copying.

The BOCES shall accept requests for public access to records and produce records during all hours it is regularly open for business.

- 1) The BOCES requires that a request be made in writing.
- 2) A request shall reasonably describe the record or records sought. Whenever possible a person requesting records should supply information regarding dates, file designations or other information that may help to describe the records sought.

Response to Requests for Access to Records

The BOCES will, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:

- a. Are specifically exempted from disclosure by state or federal statute;
- b. If disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of the Public Officers Law;

An unwarranted invasion of personal privacy includes, but shall not be limited to:

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1. Disclosure of employment, medical or credit histories or personal references of applicants for employment;
2. Disclosure of items involving the medical or personal records of a client or patient in a medical facility;
3. Sale or release of lists of names and addresses if such lists would be used for solicitation or fund raising purposes;
4. Disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party, and such information is not relevant to the work of the agency requesting or maintaining it; or
5. Disclosure of information of a personal nature reported in confidence to the BOCES and not relevant to the ordinary work of the BOCES.

Unless otherwise provided by the Freedom of Information Law, disclosure shall not be construed to constitute an unwarranted invasion of personal privacy:

- (1) When identifying details are deleted;
 - (2) When the person to whom a record pertains consents in writing to disclosure;
 - (3) When upon presenting reasonable proof of identity, a person seeks access to records pertaining to himself/herself/themself.
 - (4) When a record or group of records relates to the right title or interest in real property.
- c. If disclosed would impair present or imminent contract awards or collective bargaining negotiations;
- d. Are compiled for law enforcement purposes and which, if disclosed would:
- (1) Interfere with law enforcement investigation or judicial proceedings;
 - (2) Deprive a person of a right to a fair trial or impartial adjudication;
 - (3) Identify a confidential source or disclose confidential information relating to a criminal investigation; or
 - (4) Reveal criminal investigative techniques or procedures, except routine techniques and procedures.

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- e. If disclosed would endanger the life or safety of any person;
- f. Are inter-agency or intra-agency materials which are not:
 - (1) Statistical or factual tabulations or data;
 - (2) Instructions to staff that affect the public;
 - (3) Final agency policy or determinations; or
 - (4) External audits, including but not limited to audits performed by the comptroller and the federal government.
- g. Are examination questions or answers which are requested prior to the final administration of such questions.
- h. Are computer access codes.

The BOCES shall, within five (5) business days of receipt of a written request for records(s) reasonably described, make the record(s) available to the person requesting them, deny the request in writing or furnish a written acknowledgment of receipt of the request and a statement of the approximate date when such request will be granted or denied. BOCES shall not deny a request on the basis that the request is voluminous or that locating or reviewing the requested records or providing the requested copies is burdensome because the BOCES lacks sufficient staffing or on any other basis if the BOCES may engage an outside professional service to provide copying, programming or other services required to provide the copy, the costs of which the BOCES may recover. A BOCES may require a person requesting lists of names and addresses to provide a written certification that such person will not use such lists of names and addresses for solicitation or fund-raising purposes and will not sell, give or otherwise make available such lists of names and addresses to any other person for the purpose of allowing that person to use such lists of names and addresses for solicitation or fund-raising purposes. When a BOCES has the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, it shall be required to do so. When doing so requires less employee time than engaging in manual retrieval or redactions from non-electronic records, the BOCES shall be required to retrieve or extract such record or data electronically. Any programming necessary to retrieve a record maintained in a computer storage system and to transfer that record to the medium requested by a person or to allow the transferred record to be read or printed shall not be deemed to be the preparation or creation of a new record.

Denial of access shall state the reason for the denial and advise the person denied access of his or her right to appeal to the person or body established to hear appeals. That person or body shall be identified by name, title, business address and business telephone number. The Records Access Officer shall not be the appeals officer.

Appeals

- 1) Any person denied access to records may appeal within thirty (30) days of a denial.

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2) If the BOCES fails to respond in any manner to a request within five (5) business days of receipt of a request, as required in subdivision three of Section 89 of the Public Officers Law, such failure shall be deemed a denial of access by the agency.

3) The District Superintendent or designee shall hear appeals or shall designate a person or body to hear appeals regarding denial of access to records under the Freedom of Information Law.

4) The time for deciding an appeal by the individual or body designated to hear appeals shall commence upon receipt of written appeal identifying:

- a. The date and location of the request for records;
- b. The records that were denied; and
- c. The name and return address of the appellant.

5) The BOCES shall transmit to the Committee on Open Government copies of all appeals upon receipt. Such copies shall be addressed to:

**NYS Committee on Open Government
Department of State
One Commerce Plaza
99 Washington Avenue, Suite 650
Albany, New York 12231**

6) The person or body designated to hear appeals shall inform the appellant and the Committee on Open Government of its determination in writing within ten (10) business days of receipt of an appeal.

7) Further denial of access by the District Superintendent/Appeals Officer to a requested record shall be subject to court review in accordance with Article 78 of the Civil Practice Law and Rules.

Fees

1) There shall be no fee charged for the following:

- a. Inspection of records;
- b. Search for records;
- c. Certification of documents;
- d. Copies of documents which have been printed or reproduced for distribution to the public.

2) The BOCES may charge a fee for copies of records provided that:

- a. The fee for copying records shall not exceed 25 cents per page for photocopies not exceeding

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9 by 14 inches except when a different fee is otherwise prescribed by law or 50 cents for a double sided 8.5 by 11 inch page.

b. The fee for copies of records not covered by paragraph (a) of this subdivision shall not exceed the actual reproduction cost.

c. In determining the actual cost of reproducing a record, the BOCES may include only:

- (1) The actual cost of the storage devices or media provided to the person making the request in complying with such request;
- (2) The actual cost to the BOCES of engaging an outside professional service to prepare a copy of a record, but only when a BOCES information technology equipment is inadequate to prepare a copy, if such service is used to prepare the copy; and
- (3) Preparing a copy shall not include search time or administrative costs, and no fee shall be charged unless at least two hours of BOCES employee time is needed to prepare a copy of the record requested amount equal to the hourly salary attributed to the lowest paid agency employee who has the necessary skill required to prepare a copy of the requested record. A person requesting a record shall be informed of the estimated cost of preparing a copy of the record if more than two hours of a BOCES employee's time is needed, or if an outside professional service would be retained to prepare a copy of the record.

Public Notice

The BOCES shall publicize by posting in a conspicuous location in the Central Office:

- 1) The location where records shall be made available for inspection and copying.
- 2) The name, title, business address, and business telephone number of the designated Records Access Officer.
- 3) The right to appeal by any person denied access to a record and the name and business address of the person or body to whom an appeal is to be directed.

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