

# WARREN CONSOLIDATED ADMINISTRATIVE GUIDELINES

## 8310A - PUBLIC RECORDS

The District's public records, as defined under the Freedom of Information Act, are available for public inspection and/or copying in accordance with the following administrative guidelines. Exemptions are specified in M.C.L. 15.243.

### POLICY

The Warren Consolidated Schools Board of Education recognizes the public policy of this State is that all persons, with the exception of persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees. It is the policy of the District to release public records in accordance with the Freedom of Information Act (FOIA). See Board Policy 8310.

Public records should not be withheld from disclosure unless disclosure of all or part of a record is prohibited by state or federal law; one of the exemptions in the Act applies to all or part of the record; or the information or record requested does not fall under the coverage of the FOIA and/or is not related to the operation of government.

### DESIGNATION OF FOIA COORDINATOR

The Superintendent shall designate the FOIA Coordinator for the District and may sign notices of denial or may delegate authority to do so to another for any reason permitted by law.

### DEFINITION OF A PUBLIC RECORD

Public records are any "writings" prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function from the time they are created. A "writing" includes photographs, film, videotape, punch cards, and other things not ordinarily considered as writing, such as computer memory information. However, the fact that the record or information can be accessed using a computer does not necessarily mean that the record or information is a public record of the District. Unless the record is a District record, a database or internet server need not be accessed in order to respond to a FOIA request. Similarly, items that are in the District's possession as part of an investigation, for example, will likely *not* be public records that are subject to FOIA because they are not prepared by the District, owned by the District, or used or possessed by the District from the time they were created.

### PROCEDURES

The following procedures shall be followed in connection with requests to inspect and secure copies of School District records:

- A. Requests to inspect or secure copies of records shall be submitted to the FOIA Coordinator in writing. All in-person written requests should be made on the District's standard form, but requests may take the form of any written communication, including electronic mail and facsimile transmissions. Individual departments and schools within the District may also fill verbal requests if they enact a policy which explains the process for doing so. If verbal requests are permitted, and the requested information is available

on the District's website, the employee handling the verbal request must (where practicable and to the best of the employee's knowledge) inform the requester about the District's pertinent website address. Additionally, if a verbal request cannot be filled in its entirety with minimal disruption of staff time, or if redaction is necessary, a written request will be required. If a requesting person is disabled, either temporarily or permanently, to the extent that he or she is unable to make a written request, then District personnel must write out the request for the citizen as an accommodation under the Americans with Disabilities Act.

B. Individual departments and schools should treat each written request for information as a request to receive copies of, or inspect, public records under the FOIA. Unless the requesting person agrees to a different timeframe in writing, the District must respond to a request within five (5) business days after receiving the request. The time period allowed for responding begins when the request is received. Electronic transmissions are considered received on the next business day after the transmission was sent. However, if an e-mail request is filtered into a junk mail box or some other spam folder, it will be considered received 1 day after it is found. For purposes of this policy, any e-mail requests that are sent to or discovered in an e-mail account of a former employee or any other account that has been or should have been deactivated will be deemed to have been found in a junk mail box or spam folder. All written requests should be time-stamped upon receipt. The date of the request and the date it is discovered should be documented on the response form. The District's response to the request may only be one of the following four options:

1. Granting the request;
2. Denying the request;
3. Denying the request in part; or
4. Extending for no more than 10 business days the period during which the District will respond to the request. The reasons for the extension should be included in the extension notice. The estimated date by which the District will send its final determination must also be included.

Every FOIA request should receive one of the 4 responses set forth above. Failure to respond could be considered a denial by the courts, which may require fines and penalties be imposed against the District.

Every response to a FOIA request should include a link to the District's website, where this Administrative Guideline and a corresponding Public Summary will be kept publicly available.

- C. If a requesting person is granted the right to inspect requested records, he or she must be given a reasonable opportunity for inspection and examination of the record(s) along with reasonable facilities for doing so during usual business hours. The FOIA Coordinator or designee must supervise the inspection or take such other measures as will protect the District's public records and prevent excessive and unreasonable interference with the day-to-day discharge of municipal functions. State law prohibits the use of pen and ink (MCL 750.492) in making copies or notes of records and files and it does not address photography; therefore, only a pencil will be permitted and photography of records that would otherwise be released without redaction (or as already redacted) will be allowed. No other photography will be permitted.

The following rules shall apply to all requests for inspection of records:

1. Any person examining public records shall bring to the examination only an erasable pencil with which to make notes or lists, etc. No pens or indelible writing instruments are allowed. No notes or writing of any kind shall be made on the documents themselves.
2. A District staff member must be present at all times during the inspection of District records if any original records are involved, to protect the records from loss, unauthorized alteration, mutilation, or destruction.
3. Original documents may be removed from and replaced in District files only by authorized District staff.
4. A requester may not remove records or files from the area provided for inspection unless those documents are copied specifically for the requester by authorized District staff.
5. The FOIA Coordinator will determine, on a case-by-case basis, whether a requester may inspect an original public record, or only a copy of the record. A fee may be charged for necessary copies that are made in order to enable public inspection of records. Situations where original records are likely to require copying prior to inspection include the following:

- a) The records include exempt information that must be redacted.
- b) The records are old or delicate, or contain information that could not easily be replicated.
- c) The records are in digital format or are part of a database not available for public inspection.
- d) Providing copies would be less disruptive to the performance of District functions than providing the necessary staff oversight required for inspection of original records.

A person requesting to inspect District records will be assigned an appointment by the FOIA Coordinator in the FOIA response. Appointments will occur during the District's regular business hours. The date and time of appointments for inspection will be determined by the FOIA Coordinator. Appointments will typically occur 10 or more business days after the inspection request is received, to allow District staff to make appropriate arrangements to find, review, copy, and redact the records (if applicable), reserve appropriate facilities for the inspection, arrange for proper protection of any original records, and coordinate regular District functions while the inspection occurs.

The FOIA Coordinator will make reasonable efforts to allow a requester to inspect records for up to three hours per appointment; provided, however, that inspections will be cut short, postponed, or rescheduled when necessary to avoid unreasonable interference with the District staff's performance of their primary functions.

Before the inspection and examination begins, the identity and contact information of the requester shall be confirmed. A credit or debit card may be required from the requester prior to beginning the inspection and examination. The fees authorized by the FOIA should then be estimated, itemized, and presented to the requester so that the requester understands the approximate cost that will be charged at the conclusion of the inspection and examination. If it reasonably appears that the inspection request will involve fees greater than \$50.00, a deposit of ½ the estimated total fee should be required prior to allowing the inspection and examination. At the end of the inspection and examination, the itemized fees shall be updated, finalized, and presented to the requester for immediate payment at that time. Any requester who fails to pay shall be invoiced by the District and shall be subject to the "delinquent payer" rules set forth below.

- D. A person has a right to inspect or copy records only if the person describes the records sufficiently to enable the department to find them. This provision of the FOIA eases the burden of responding to requests for "all records" regarding a subject or person covering some indeterminate period of time. The District's legal counsel should be consulted regarding extremely broad or voluminous requests for "all records" over an extended period of time, and for extremely vague requests, in order to determine an appropriate response.

Requests received by the FOIA Coordinator shall be forwarded to the appropriate department or school of the District, and the responsible administrator of that individual department or school will insure that the response is completed and returned to the FOIA Coordinator for processing in a timely manner. This procedure in the individual department should not take more than three business days.

When an individual department or school directly receives a request for records that are not maintained by that department or school, the request must be hand carried or electronically forwarded, on the date received if possible, to the FOIA Coordinator for processing. Receipt of the request, and the transfer to the FOIA Coordinator, should be documented by the individual department that originally received the request.

- E. Denials may be issued when the requested record, as described, does not exist or cannot reasonably be located based on the description given by the requester.

The FOIA contains exemptions for a variety of records and information which may be withheld from disclosure. The District's FOIA response form contains the most common exemptions in a "checkbox" format for ease of use, but other exemptions may apply when dealing with less common requests, so each department or school and the FOIA Coordinator should consult the statute or a list of all of the exemptions to ensure that no others apply.

In addition, a number of state and federal laws prohibit disclosure of certain information, such as copyrighted materials, school and student records, non-public court records, privileged information, personal information, and others. Absent unusual circumstances, all records not protected by a FOIA exemption or another law should routinely be produced. If an individual department intends to withhold records for any reason other than the reasons listed above, or if a question arises regarding the propriety of releasing certain records due to the nature of the information contained therein, the District's legal counsel must be consulted and any denial must be approved by the Superintendent.

Individual departments need not produce records which have nothing to do with the District's official functions, need not comply with vague requests such as requests for "all records," and need not compile or summarize information or otherwise create new public records in order to answer "interrogatory style" questions.

- F. Any requested public record that is found must first be examined and reviewed by the responding department to determine if it is exempt from disclosure, or if it contains both exempt and non-exempt information. If the public record is determined to contain both exempt and non-exempt material, the exempt material shall be separated or deleted/redacted and the non-exempt material must be made available to the requesting person. If the nature of the exempt material is not readily apparent, a short summary or explanation must be included in the response if doing so will not defeat the purpose of deleting the exempt material. If the request itself or the redaction of responsive records may involve legal concerns, the District's legal counsel should be consulted and may assume the redaction role or review the redactions proposed by the department.
- G. Records shall be made available at the Administration Building during the hours of 8:00 a.m. to 4:00 p.m. Monday through Friday, with the exception of the holidays when District schools are closed.
- H. When preparing the District's response, the prescribed form must be utilized. All copies of public records should be mailed to the requesting person unless personally retrieved by the requesting person after being notified of their availability. For requests involving fees greater than \$50.00, a deposit of ½ the estimated total fee should be required prior to beginning work on retrieving the requested documents. The deposit request must be itemized with estimates of each fee component (see below) and must include a "best efforts estimate" regarding the time frame it will take to provide the records to the requester. The time frame estimate must be made in good faith. It is not binding, but all other requirements in the FOIA remain in effect.
- I. The FOIA permits persons to request a subscription, valid for up to six months and renewable, to future issuances of public records created on a regular basis, *i.e.*, agendas and minutes of meetings.

## **FEES**

Absent a waiver by the FOIA Coordinator in whole or in part, all charges associated with processing a FOIA request shall be paid in full before the release of any public records. The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced

fee is in the public interest because release of the record(s) can be considered as primarily benefiting the general public.

The following fees shall be charged and paid to Warren Consolidated Schools by the requester:

1. Labor costs directly associated with the necessary searching for, locating, and examining of public records in conjunction with receiving and fulfilling a granted written request.
  - a. Labor costs must be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.
  - b. Labor costs do not apply to written requests that are denied or verbal requests that are granted.
  - c. Labor costs for search, examination, and review will not be charged unless failure to charge would result in unreasonably high costs to the District because of the nature of the request in the particular instance. Unreasonably high costs will be deemed to occur at the point when an employee spends 15 minutes or more to search for, locate, and examine the requested record(s) as a result of receiving and fulfilling a granted written request.
2. Labor costs directly associated with the separating and deleting of exempt information from nonexempt information (known as “redacting”).
  - a. Labor costs must be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.
  - b. Labor costs for redacting do not apply to written requests that are denied or verbal requests that are granted.
  - c. If no District employee is able to review and redact any or all of the requested records, the FOIA coordinator may ask the District’s legal counsel to conduct the redaction. The attorney’s time shall be billed as a labor cost at a rate of 6 times the Michigan minimum wage.
  - d. Labor costs for redaction will not be charged if the FOIA coordinator or an employee in that department of the District knows or has reason to know that a redacted version of the same requested record is still in the District’s possession.
  - e. Labor costs for redaction will not be charged unless failure to charge would result in unreasonably high costs to the District because of the nature of the request in the particular instance. Unreasonably high costs will be deemed to occur at the point when an employee or outside contractor spends 15 minutes or more to redact the requested record(s).
3. The actual and most reasonably economical cost of the media utilized to provide copies of public records to a requester. A requester may stipulate that the requested records be provided on nonpaper physical media, and the stipulation must be honored unless the District lacks the technological capability necessary to do so. In order to ensure the integrity and security of the District’s technological infrastructure, the District will procure any requested non-paper media and will not accept or utilize non-paper media from the requester.
4. The actual total incremental cost of necessary duplication or publication for paper copies of public records provided to the requester, calculated as a total cost per sheet. The law limits the District’s copy charge to a maximum of \$0.10 per page. Each individual department and school must track and itemize the total number of paper copies that are made in response to a FOIA request, using the per-page cost established by the District for black and white copies and for color copies.

- a. Exception: The actual cost may be charged for paper of a size different than letter or legal size.
  - b. All copies must be double-sided, if it will save on costs and if it is possible to do so, unless the requester stipulates to single-sided copies.
5. The cost of labor directly associated with duplication or publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requester on nonpaper physical media or through the internet or other electronic means as stipulated by the requester.
  - a. Labor costs for this category of work (making the copies) shall be estimated and charged in increments of 6 minutes, with all partial time increments to be rounded down.
6. Actual mailing costs, including the cost for envelopes or other containers used for mailing copies of the public records requested. In instances when postal delivery confirmation is procured, the actual mailing costs will include the least expensive form of such confirmation.

These costs may be imposed, if applicable, even when a requester does not actually receive copies, but instead requests the opportunity to review the requested records.

Employees should keep track of the amount of time they spend on each request in increments of 15 minutes, rounding down if the final increment is less than 15 minutes, except the time spent actually making copies (using any media) should be kept in increments of 6 minutes, also rounding down if the final increment is less than 6 minutes. Regardless of which employee fulfilled the request, the charge for labor shall only reflect the hourly wage of the lowest paid District employee capable of performing each task (finding the records, redacting the records, and copying the records). That charge should then be multiplied by the fringe benefit multiplier calculated by the District (different multipliers may apply to different employee categories) in order to recoup the District's fringe benefit costs up to 50% or the actual fringe benefit costs, whichever is less. Overtime wages may not be used to calculate the fringe benefit multiplier. However, overtime wages may be recovered as a labor cost if the requester stipulates to being charged for overtime.

If the request is granted, or granted in part, payment must be made in full for the allowable fees associated with responding to the request before the public record is made available. A detailed itemization of the allowable costs incurred to process the request will be provided to the requester.

### **INDIGENCY FEE REDUCTION**

A copy of a public record must be furnished without charge for the first \$20.00 of the fee of each request to an individual who submits an affidavit that he or she is indigent and receiving public assistance or, if not receiving public assistance, stating facts showing an inability to pay the cost because of indigency. All costs over \$20.00 may be charged to the requester. A requester may only utilize this indigency option twice during any calendar year, so all indigency fee waivers should be tracked and recorded. An individual is not eligible for the indigency discount if he or she is requesting information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request.

### **NONPROFIT FEE WAIVERS**

Certain nonprofit organizations will not be charged for fulfilling their FOIA requests. These organizations are limited to those formally designated by the State to carry out activities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and Advocacy for Individuals with Mental Illness Act, or their successors, if the request is made directly on behalf of the organization or its clients,

the request is made for a reason consistent with the mission and provisions of those laws under Section 931 of the Mental Health Code, and the request is accompanied by documentation of its designation by the State.

## **RECORDS AVAILABLE ON DISTRICT WEBSITE**

If a requested public record is available to the general public on the District's website, the FOIA Coordinator must notify the requester in the District's written response that all or a portion of the requested information is available on the District's website. The specific website address where the information can be found must also be provided. If a requester still wants copies of those records after being notified of their availability online, the requester may be charged for the records in accordance with the six fee components itemized above, except the fringe multiplier may be greater than 50% if the District has calculated the fringe benefit multiplier to be greater than 50%.

## **LATE RESPONSES**

The costs charged for responses that are late will be reduced by 5% for each day that the response is late, with a maximum 50% reduction. The reduction will only be applied if the lateness was willful and intentional, or the written request included language that should have made it apparent that the request was a FOIA request, such as including a request for information within the first 250 words, or specific mention of "Freedom of Information Act," "FOIA," "Copy," or a recognizable misspelling of such, or legal code references to the FOIA such as "MCL 15.231," on the front of an envelope, in the subject line of the request, or on the cover page of a fax.

## **DELINQUENT PAYERS**

If a requester does not pay for requested records, a deposit of 100% of the estimated cost may be required from the requester before filling any subsequent written requests from that requester, so long as the final fee for the unpaid request did not exceed 105% of the estimated fee, and so long as the District still has the records requested in the prior request, and so long as the deadlines of the FOIA were met when responding to the prior request, and so long as 90 days or more have passed since notifying the requester in writing that the records were available, and so long as the requester cannot show proof that the prior bill was paid, and so long as the new estimated fee deposit is calculated as required by the FOIA (using the six fee components listed above).

Exceptions: To avoid the 100% deposit requirement, the requester may pay the prior bill in full. In addition, the 100% deposit requirement will not be imposed if more than 365 days have passed since the prior written request was made.

## **SERVICE OPTION**

Unless another, more specific, law applies, every written request for public records must be handled as a FOIA request. Some departments and schools provide services, however, for specific or routine requests. Although the FOIA applies, the District is not prohibited from offering the requester an alternative option. Therefore, each department and school may create its own internal list of records requests that have traditionally been provided to requesters for a predetermined fee, rather than providing the records through FOIA. Upon receipt of one of the listed requests after routing from the FOIA Coordinator, or in response to a verbal (in-person) request, the department may offer the requester the option of receiving the requested records for a flat fee, rather than receiving them under FOIA for the required itemized fees and costs. If the requester selects the option of receiving the records as a service, the FOIA response form must refer to that decision in order to confirm the requester's consent in writing. For verbal (in-person) requests, the requester should be asked to sign a form indicating that the records are being provided as a spontaneous service rather than under FOIA.

## **DENIAL FORM**

The written notice denying a request must contain the following:

1. An explanation of the basis for the determination that the public record, or portion of it, is exempt from disclosure, if exemption is the reason for denial;
2. A certification that the public record does not exist (if applicable);
3. A description of a public record that is not being disclosed, or information in a public record that is deleted/redacted;
4. A full explanation of the requesting person's right to appeal a denial to the Superintendent or seek judicial review of a denial;
5. Notice of the right to receive attorney fees and damages as provided in the Act, if a court orders disclosure of all or part of a public record; and
6. Notice of the District's website address where this Administrative Guideline and the Summary can be found.

The denial notice must be signed by the individual acting as the designated FOIA Coordinator.

## **RECORD RETENTION**

All requests should be documented by the FOIA Coordinator and must be retained on file for not less than one year.

## **APPEALS**

The District has 10 business days to respond to a written appeal of a denial, partial denial, or a fee that is charged. All appeal letters should be forwarded to the Superintendent immediately. The Superintendent is designated as the "head of the public body" under FOIA and is the only employee who is authorized to respond to an appeal. The Superintendent may reverse, uphold, or uphold in part the denial decision that is being appealed, or waive, reduce, or uphold the fee that is being appealed, or he may extend his response deadline by an additional 10 business days under unusual circumstances.

The Superintendent's determination must include a certification that the statements in the determination are accurate and that the fee complies with the District's publicly available Administrative Guideline and Section 4 of the FOIA.

Written appeals must specifically state the word "appeal" and identify the reasons for reversal of a denial decision or the reasons why the required fee exceeds the amount permitted under the District's policies and/or the FOIA.

## **FORMS**

The FOIA Coordinator shall use the District's standard form for the required Detailed Itemization of Fees. Other forms necessary or convenient to process FOIA requests may be developed by the FOIA Coordinator with tailoring to suit the unique nature of a department or school processing FOIA requests, including but not limited to the following:

Request Form

Response Form

Good Faith Deposit Form

## **CONFLICTING POLICIES**

To the extent that this Administrative Guideline conflicts with previous FOIA policies promulgated by the Superintendent or any individual department or official, this Administrative Guideline is controlling. To the extent that any internal policy promulgated by the FOIA Coordinator subsequent to the adoption of this Administrative Guideline is found to be in conflict with any previous policy promulgated by the Superintendent or any individual department or official, the internal policy promulgated by the FOIA Coordinator is controlling. To the extent that any provision of this Administrative Guideline or any internal policy promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any law, the applicable law shall control. The FOIA Coordinator is authorized to propose modifications of this Administrative Guideline at any time, and may adopt such internal rules as he or she may deem necessary to facilitate the legal review and processing of requests for public records made pursuant to the FOIA, provided that such modifications and rules are consistent with state law, approved by the District's legal counsel, and include a clear effective date.

