



POLICY #: 008
SECTION: Board
TITLE: Right To Know Policy
ADOPTED: November 20, 2012
REVISED:

1. Background:

On February 14, 2008, the Governor signed Pennsylvania's new Right-to-Know Law, Act 3 of 2008. The final portions of the new Right-to-Know Law recently became effective. The Board of Trustees of the 21st Century Cyber Charter School ("21CCCS") has adopted this Policy in order to facilitate implementation of the new Right-to-Know Law at 21CCCS.

The Board of Trustees of 21CCCS directs the appointed Open Records Officer to implement procedures necessary to effectuate this Policy and to adhere to the requirements of the new Right-to-Know Law. This policy supersedes and replaces all previously adopted Right-to-Know Law Policies at 21CCCS and any and all procedures related to the Right-to-Know Law at 21CCCS shall be modified as consistent with this Policy.

Language in this Policy has been drafted taking into consideration the Right-to-Know Law and information available from and through the Office of Open Records and Pennsylvania Department of Education. Nothing in this policy shall be construed to conflict with applicable state and/or federal laws, including but not limited to the Right-to-Know Law and any and all applicable common law and cases developing from the Right-to-Know Law and/or interpreting the Right-to-Know Law. In the event the Right-to-Know Law is amended or otherwise revised, this Policy shall be interpreted to incorporate any revisions or changes to the Right-to-Know Law without the need for Board action.

2. Definitions:

Open Records Officer:

The Open Records Officer for 21CCCS is hereby the Board Secretary of 21CCCS, currently:

Kristen Boyer

In the event that a new Board Secretary is named by the Board, that official shall assume the role and duties of the Open Records Officer without the need for further Board action.

The Open Records Officer is the individual designated by the Board to receive, review and respond to all requests directed to 21CCCS pursuant to this Policy and applicable law.

Public Record:

A record of 21CCCS is public provided the record is not:

(1) exempt under the Right to Know Law;

(2) exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or

(3) protected by a privilege.

This Policy shall not be interpreted to require or allow access to any record that is not a public record under the Right-to-Know Law.

This Policy shall be interpreted to allow access to or duplication of public records to the extent required by the Right-to-Know Law.

Requester:

For purposes of this Policy, a Requester is a person that is a legal resident of the United States and requests a record pursuant to the Right-to-Know Law. The term includes an agency.

Response:

Access to a record or written notice to a Requester granting, denying or partially granting and partially denying access to a record.

3. Functions of the Open Records Officer:

The Open Records officer shall receive requests submitted to 21CCCS under the Right-to-Know Law, direct requests to other appropriate persons in accordance with the Right-to-Know Law, track 21CCCS's progress in responding to requests and issue interim and final responses under the Right-to-Know Law and this Policy.

4. Public Records Access Room:

21CCCS may designate a Public Records Access Room. The function of a Public Records Access Room is to provide a specific, established site where Requesters may have physical access to some or all of 21CCCS's open records. If the Board elects not to establish such a room, the Open Records Officer shall determine on an ad hoc basis and in accordance with the Right-to-Know Law the building and room where Public Records will be made available to a Requester and the hours of availability.

In either instance the Open Records Officer has the discretion to establish procedures governing the use of the room including, but not limited to, the hours of access, the need and adequacy of proof of identification, restrictions or prohibitions on the removal of Records, the use of written requests and the ability of a Requester to bring his or her own equipment into the room.

5. Procedure for Requesting Records:

Oral requests: The Right-to-Know Law does not require 21CCCS to respond to oral requests. The Open Records Officer shall refuse to accept any oral request.

Anonymous requests: The Right-to-Know Law does not require 21CCCS to respond to Anonymous requests. The Open Records Officer shall refuse to accept any written request that does not identify the Requester.

Written requests: The Right-to-Know Law requires that the Open Records Officer act upon each non-anonymous written request when such request is submitted in person, by mail, by facsimile or e-mail.

(a) Contents of a request: The Right-to-Know Law sets forth various specifications for the contents of a written request.

A Requester must submit a request in writing to the Open Records Officer on a form to be provided by the Open Records Officer or on the Official form issued by the Office of Open Records. The request must be addressed to the Open Records Officer and must set forth the name and address where 21CCCS should address its response. The request should identify or describe the Record or Records sought with sufficient specificity to enable 21CCCS to ascertain which Records are being requested. The written request may be submitted in person, by mail, facsimile or email. Any 21CCCS Employee or Board Member who receives a request directed to the Open Records Officer shall immediately forward that request to the Open Records Officer.

The Right-to-Know Law provides that the Requester need not include the reason for the request or the intended use of the Records. Therefore, the Open Records Officer shall not insist that such a statement be provided, nor shall 21CCCS reject or refuse a request on the grounds that no such reason was given.

(b) Forms: 21CCCS may create or adopt forms for use by Requesters in preparing written requests. In the absence of a form created by 21CCCS, the Open Records Office's official Form must be used.

(c) Identification: As the Right-to-Know Law provides that 21CCCS provide a Requester with access to a Public Record if the Requester is a legal resident of the United States, 21CCCS may require the Requester to produce photographic identification to the extent allowed by the Right-to-Know Law.

Submittal of Open Records Requests:

Address all Open Records Requests to:

Open Records Officer

21st Century Cyber Charter School

1000 North 10th Street

Scranton, PA 19310

Fax: 484-875-5404

E-Mail: info@21cccs.org

21CCCS shall post this information to its website and shall post it at a location that is publicly accessible.

6. Timing of Responses:

The Right-to-Know Law provides that, upon receipt of a written Open Records Request, 21CCCS must make a good faith effort to determine if the requested Record is a Public Record, financial record, or legislative record and to respond as promptly as possible under the circumstances existing at the time of the request, and that this time shall not exceed five (5) business days from the date the written request is received by 21CCCS's Open Records Officer.

The five (5) business day period does not begin to run until 21CCCS's designated Open Records Officer has received a written request in accordance with the Right-to-Know Law and this Policy. If an Open Records Request is submitted to 21CCCS or to some Officer or employee of 21CCCS other than the Open Records Officer, the five (5) business day period has not yet begun.

Either a final or an interim written response must be made within five (5) business days from the date that the Open Records Officer received the request. If the Open Records Officer fails to respond within that time period, the Open Records Request is deemed denied.

The Right-to-Know Law and this Policy contemplate that Requesters will receive a Response within the five (5) business day period. However, the Right-to-Know Law and this Policy also provide 21CCCS with certain specific exceptions to invoke a single extension of time, which may not exceed 30 calendar days. If an extension is invoked and then there is no timely Response, the Open Records Request is deemed denied. Likewise, if the Open Records Officer notifies the Requester that it needs more than the maximum of 30 days, the request is deemed denied.

7. Processing of Open Records Requests by the Open Records Officer:

(1) Upon receiving an Open Records Request, the Open Records Officer shall, at a minimum, promptly complete the following tasks to the extent required by the Right-to-Know Law:

- (a) Date-stamp or otherwise note the date of receipt on the Open Records Request.
- (b) Compute the day on which the five (5) business day period will expire and make a notation of that date.
- (c) Maintain a paper or electronic copy of the Open Records Request, including all documents submitted with it and the envelope (if any) in which it was received.
- (d) Create an official file for the retention of the original Open Records Request.
- (e) Make a good faith effort to determine if the record requested is a public record and if 21CCCS has possession, custody or control of the record.
- (f) Maintain a copy of 21CCCS's response to the request.

(2) For purposes of determining the five (5) business-day period:

- (a) A business day shall be from 8:00 a.m. until 4:00 p.m. on any Monday, Tuesday, Wednesday, Thursday, or Friday, except those days when the offices of 21CCCS are closed for all or part of a day due to a holiday; due to severe weather (such as a blizzard or ice storm); due to natural or other disaster; or due to the request or direction of local, state, or federal law enforcement Officers.
- (b) Any Open Records Request received by the Open Records Officer after the close of its regular business hours shall be deemed received by that office on the following business day.
- (c) For purposes of determining the end of the five (5) business day period, the day that an Open Records Request is received (or deemed received) is not counted. The first day of the five (5) business day period is 21CCCS's next business day.

8. Responses:

(1) The act of providing a Requester with physical access to a document or a copy of the requested Record, in the Open Records Office, is a "Response" for purposes of this Open Records Policy. Unless 21CCCS issues written policies to the contrary, only the Open Records Officer possesses the authority to permit this access.

(2) Where timely access is not provided in accordance with subsection 8(1) above, the Act requires that 21CCCS's Response be in writing. The Open Records Officer has the duty to prepare and send written Responses. In preparing a written Response, the Open Records Officer should consult, as necessary, with the Solicitor.

(3) 21CCCS is not required to create a Public Record that does not already exist, nor is 21CCCS required to compile, maintain, format, or organize a Public Record in a manner in which 21CCCS does not currently do so.

(4) The Open Records Office shall send written Responses to Requesters by one of the following, in its discretion: United States mail, facsimile transmission; electronic transmission; overnight or parcel delivery service; or, courier delivery.

9. Access to Public Records:

Unless otherwise provided by law, a public record, legislative record or financial record shall be accessible for inspection and duplication in accordance with the Right-to-Know Law and this Policy. A public record, legislative record or financial record being provided to a Requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists. Public records, legislative records or financial records shall be available for access during the regular business hours of 21CCCS.

21CCCS shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which 21CCCS does not currently compile, maintain, format or organize the record.

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 21CCCS will provide access to inspect the record electronically. If the Requester is unwilling or unable to access the record electronically, the Requester may, within thirty days following receipt of the notification, submit a written request to the Open Records Officer to have the record converted to paper. 21CCCS shall provide access to the record in printed form within five days of the receipt of the written request for conversion to paper.

Physical Access to Public Records:

(1) The Act requires that, unless otherwise provided by law, the Public Records of 21CCCS must be accessible for inspection by any Requester during the regular business hours of 21CCCS. Unless 21CCCS adopts written policies to the contrary, the regular business hours of 21CCCS for purposes of the Act are from 8:00 a.m. until 4:00 p.m. on any business day.

(2) Access shall be provided by the Open Records Officer either in the Open Records Office or the Public Records Access Room, at the discretion of the Open Records Officer, depending on the size, complexity or other circumstances of the request.

10. Notice of Review:

Upon receipt of a written request for access, the Open Records Officer shall determine if one of the following applies:

(a) the request for access requires redaction of a record in accordance with the Right to Know Law;

- (b) the request for access requires the retrieval of a record stored in a remote location;
- (c) a timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations;
- (d) a legal review is necessary to determine whether the record is a record subject to access under this act;
- (e) the Requester has not complied with the agency's policies regarding access to records;
- (f) the Requester refuses to pay applicable fees authorized by this act; or
- (g) the extent or nature of the request precludes a response within the required time period.

Upon a determination that one of the above factors applies, the Open Records Officer shall send written notice to the Requester within five business days of receipt of the request for access. The notice shall include a statement notifying the Requester that the request for access is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided and an estimate of applicable fees owed when the record becomes available. If the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed for in the Right-to-Know Law, the request for access shall be deemed denied unless the Requester has agreed in writing to an extension to the date specified in the notice.

If the Requester agrees to the extension, the request shall be deemed denied on the day following the date specified in the notice if 21CCCS has not provided a response by that date.

11. Written Final Responses:

(a) Types of final Responses. The Act provides for three types of written final Responses:

(i) 21CCCS grants the entire Open Records Request.

(ii) 21CCCS refuses the entire Open Records Request.

(iii) 21CCCS grants part of the Open Records Request and refuses the remainder.

(b) Deemed Denials. The failure of 21CCCS to make a timely final Response is a Deemed Denial under the terms of the Act.

(c) Final Responses that deny Open Records Requests, either in whole or in part shall be in writing by the Open Records Officer and include all of the following:

(i) A description of the record requested.

(ii) The specific reasons for the denial, including a citation of supporting legal authority.

(iii) The typed or printed name, title, business address, business telephone number and signature of the Open Records Officer on whose authority the denial is issued.

(iv) Date of the response.

(v) The procedure to appeal the denial of access under the Right-to-Know Law.

(d) Final Responses that grant the Open Records Request: If the Open Records Officer grants the request, the response shall so inform the Requester and include any necessary information for access.

12. Redaction:

If 21CCCS determines that a public record, legislative record or financial record contains information which is subject to access as well as information which is not subject to access, 21CCCS's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record, legislative record or financial record and cannot be separated, 21CCCS shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. 21CCCS may not deny access to the record if the information which is not subject to access is able to be redacted. Information which 21CCCS redacts in accordance with the Right-to-Know Law shall be deemed a denial under the Right-to-Know Law.

13. Appeals:

If a written request for access to a record is denied or deemed denied, the Requester may file an appeal with the Office of Open Records or judicial, legislative or other appeals officer designated under the Right to Know Law within 15 business days of the mailing date of 21CCCS's response or within 15 business days of a deemed denial. The appeal shall state the grounds upon which the Requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by 21CCCS for delaying or denying the request.

Unless otherwise provided by applicable law, the Office of Open Records shall assign an appeals officer to review the denial.

A person other than 21CCCS or Requester with a direct interest in the record subject to an appeal under this section may, within 15 days following receipt of actual knowledge of the appeal but no later than the date the appeals officer issues an order, file a written request to provide information or to appear before the appeals officer or to file information in support of the Requester's or 21CCCS's position. Copies of the written request shall be sent to the agency and the Requester.

14. Posting:

The following information shall be posted at 21CCCS and on 21CCCS 's Internet website:

- (1) Contact information for the open-records officer.
- (2) Contact information for the Office of Open Records or other applicable appeals officer.
- (3) A form which may be used to file a request.
- (4) Regulations, policies and procedures of 21CCCS relating to the Right to Know Law.

Current Information for the Office of Open Records:

Physical Address:

Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, Plaza Level
Harrisburg, PA 17120-0225

Mailing Address:

Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Phone: 717-346-9903

Fax: 717-425-5343

Email: openrecords@state.pa.us

15. Special Considerations:

a. Disruptive requests.

21CCCS may deny a Requester 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 21CCCS. Such denial shall not restrict the ability to request a different record.

b. Disaster or potential damage.

21CCCS may deny a Requester access:

(i) when timely access is not possible due to fire, flood or other disaster; or

(ii) to historical, ancient or rare documents, records, archives and manuscripts when access may, in the professional judgment of the curator or custodian of records, cause physical damage or irreparable harm to the record.

To the extent possible, the contents of such a record shall be made accessible to a Requester even when the record is physically unavailable.

c. Third Parties

If, in response to a request, 21CCCS produces a record that is not a public record, legislative record or financial record, 21CCCS shall notify any third party that provided the record to the agency, the person that is the subject of the record and the Requester. 21CCCS shall notify a third party of a request for a record if the third party provided the record and included a written statement signed by a representative of the third party that the record contains a trade secret or confidential proprietary information. Notification shall be provided within five business days of receipt of the request for the record. The third party shall have five business days from receipt of notification from the agency to provide input on the release of the record. 21CCCS shall deny the request for the record or release the record within ten business days of the provision of notice to the third party and shall notify the third party of the decision.

16. Duplication of Public Records:

(a) A Public Record shall be accessible for duplication by a Requester. 21CCCS does not make duplication equipment available to a Requester but shall provide other means by which a Requester may obtain copies.

(b) 21CCCS will assign its own staff to make the duplications requested by the Requester; or it may contract for duplication services and require that the Requester pay the contractor for those services. 21CCCS shall charge the Requester a reasonable fee(s) that is consistent with the prevailing charges in the geographic location where the duplication occurs.

17. Retention and Disposal of Public Records:

There are statutes, regulations and other laws that regulate 21CCCS's retention and disposition of Records. 21CCCS shall follow the mandates of these laws and regulations. Neither the Act nor this policy modifies, rescinds or supersedes any retention or disposition schedule established pursuant to law or other regulation.

18. Fees and Charges:

Reasonable fees and charges as permitted by the Right-to-Know Law shall be established by the Board via Resolution and Established Fee Structure. The Board-approved list of fees shall be available for review by Requesters.

Such fee structure may be amended from time to time as appropriate, using the standards provided in the Right-to-Know Law and shall not exceed the fee structure recommended by the Office of Open Records.

All checks will be made payable to "21st Century Cyber Charter School." If the fee is for copying only and the anticipated cost exceeds \$100.00, 21CCCS may allow access to the Records but shall refuse to make copies until the fee is paid. If the fee is for redacted copies or some other allowable service that is necessary in order for access to be provided, 21CCCS may deny access until the fee is paid. At no time will 21CCCS accept cash as a method of payment.

21CCCS shall not charge a fee for review of a record to determine whether the record is subject to access.

All copies must be retrieved within ninety (90) days of 21CCCS's response or 21CCCS may, in the discretion of the Open Records Officer, and to the extent allowed by law, dispose of copies made. The Requester remains responsible for fees incurred to the extent allowed by the Right-to-Know Law.

The Open Records Officer may waive fees set by the Board on a case by case basis consistent with applicable state and federal law.

TO THE EXTENT THAT ANYTHING IN THIS POLICY COULD BE CONSTRUED TO CONFLICT WITH APPLICABLE STATE AND/OR FEDERAL LAWS, THE APPLICABLE STATE AND/OR FEDERAL LAWS CONTROL. THIS POLICY IS NOT INTENDED TO CONFLICT WITH CHARTER REQUIREMENTS.