



REQUESTING PUBLIC RECORDS

*Arizona Law Favors
Disclosure of Public
Records*

AEA Arizona
Education
Association

arizonaea.org/helpdesk

Public Records Statutes are in Title 39.

For a comprehensive guide (from 2018), go to the Arizona Attorney General's Agency Handbook, Chapter 6, at https://azag.gov/sites/default/files/docs/agency-handbook/2018/agency_handbook_chapter_6_corrected.pdf on the Internet.

A more updated guide (2020) is available from the State Ombudsman at <https://www.azoca.gov/wp-content/uploads/Public-Records-Law-Booklet-2020.pdf>



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Arizona Law Favors Disclosure of Public Records

Arizona's Public Records Law requires the disclosure of most public records upon request. Any individuals, including school employees and their associations, may request to examine or receive copies of public records. "Public records...shall be open to inspection by any person at all times during office hours." A.R.S. § 39-121. You can search for this statute and other Arizona laws by going to www.azleg.gov.

Arizona's Public Records Law applies to a "public body," which includes the state, any county, city, town, school district, agency, department, board, commission, or other governmental entity. See A.R.S. § 39-121.01(A)(2).

Districts Must Disclose Many Useful Records

Most frequently, school employees request public records from their districts. The following public records, which should be available upon reasonable request, are useful to school employees and local associations:

1. Financial information, including budget data and all expenditures of public funds.
2. All employee contracts and employee discipline, including the contracts and fringe benefits provided to administrators.
3. Contracts and correspondence with outside vendors, such as equipment purchase or service contracts.
4. Governing Board minutes, agendas, and supporting documents available to the Governing Board in open meetings.
5. Safety and accident reports, including records of building or equipment inspection, repair, and maintenance.
6. Orders, pleadings, and other documents once filed in court.
7. Statistics and other official records about the district which are received from other governments.

Some Public Records Will Not be Disclosed

Some public records are either redacted or not disclosed because specific statutes require confidentiality. Other records are not disclosed because disclosure would create an invasion of personal privacy that outweighs the public's right to know. Finally, some government records are not disclosed because disclosure would be detrimental to the best interests of the government, and the adverse impact on government operations outweighs the public's right to know.



The following are common examples of confidential school district records that usually are either redacted or not disclosed to the public:

1. Governing Board minutes of executive sessions authorized under the Open Meeting Law.
2. Evaluations and performance classifications, subject to the exceptions in A.R.S. § 15-537 (J):
 - Copies of the evaluation report and performance classification of a certificated teacher retained by the governing board and the department of education are confidential, do not constitute a public record and shall not be released or shown to any person except:
 1. To the certificated teacher who may make any use of it.
 2. To authorized district officers and employees for all personnel matters regarding employment and contracts and for any hearing that relates to personnel matters.
3. To school districts and charter schools that inquire about the performance of the teacher for prospective employment purposes. A school district or charter school that receives information about a certificated teacher from the evaluation report and performance classification shall use this information solely for employment purposes and shall not release this information to or allow access to this information by any other person, entity, school district or charter school.
4. For introduction in evidence or discovery in any court action between the governing board and the certificated teacher in which either:
 - (a) The competency of the teacher is at issue.
 - (b) The evaluation and performance classification were an exhibit at a hearing, the result of which is challenged.
5. Employees' home addresses, home telephone numbers, ages, Social Security numbers, and medical information.
6. Confidential information obtained prior to an employee's employment, such as recommendations and references.
7. Most student records, including academic records, behavioral records, and medical and psychological information, unless the parent or guardian consents to the disclosure.
8. Confidential attorney/client communications.
9. Information about competitive bids which, if disclosed, would interfere with the competitive bidding process.



A school district may be required to disclose a document that contains some confidential information if that information can be redacted. For example, a teacher's contract may state a Social Security number.

Upon request, the district must disclose the contract after redacting the Social Security number.

Arizona law does not clearly specify all of the public documents that must be kept confidential. There are hundreds of statutes holding certain records confidential and they do not all appear in the same place.

Some other states and the federal government have more specific requirements for what public records can and cannot be disclosed. The Freedom of Information Act ("FOIA") is the federal law that requires disclosure of certain federal records upon request. FOIA does not apply to records held by school districts or other Arizona public bodies. However, Arizona courts may look to FOIA for guidance to help them interpret Arizona's Public Records Law in difficult cases.

A district only has to disclose records in its possession. The district does not have to create a document or seek it from some other source in order to respond to a public records request.

Contents of a Public Records Request

Although the use of the form is not required by statute, many school districts have a specific form for requesting public records. *See Appendix Sample C.* If there is no form, then simply write a letter to the school district superintendent, business manager, or "custodian of records."

Whether you use a form or write a simple letter, a public records request should contain:

1. The name of the person or entity making the request.
2. A detailed description of the requested records.
3. A request to either examine the documents or a request to obtain electronic or printed copies.
4. A statement that the records will not be used for a commercial purpose.
(Additional requirements apply to records used for commercial purposes.)

Helpful Tips for a Successful Public Records Request

Always put your request in writing and keep a copy. If you do not receive a response within a week, send a second request with a copy of the first request. If the district denies your request or does not respond to a second request, contact your local association, arizonaaea.org/helpdesk, or your AEA Organizational Consultant.

Describe the requested documents carefully. Think about what you really want. Sometimes you know the specific documents that you want. More frequently, you do not know which documents may contain the desired information. It can be a challenge to write a request broad enough to obtain the relevant information, but sufficiently specific so that you are not overwhelmed with hundreds of papers.

For example, if you want to know about the compensation paid to the superintendent, do not limit your request to the superintendent's contract. Ask to examine "all documents related to the superintendent's compensation and fringe benefits during the past ___ years, including but not limited to contracts, contract addenda, contract renewals, and documents reflecting stipends, health insurance, life insurance, disability insurance, car allowance, credit card records, reimbursed expenses, and other fringe benefits."

State a reasonable time and place when you want the records.

One or two weeks should suffice.

Ask to examine the documents before you ask for copies, especially if your request could involve a lot of documents. Save money by only paying for the copies you really need. Some districts charge nothing or minimal fees for copies provided to their employees, but some charge \$1.00 per page or even more. Review the documents, mark the ones you need with post-its or paper clips, and then only request copies of the marked pages. *See Appendix Sample A.* You may also be able to save money by requesting electronic copies of documents.

If you need copies promptly, consider including a \$5.00 or \$10.00 check with your request. This may expedite the process by avoiding the time needed to calculate the exact copy costs. For example, state, "I enclose a check for \$10.00, payable to _____ School District. Please use these funds to defray the copying and postage costs and keep any overpayment. I expect to receive the documents within two (2) weeks [or I will be at the District Office on Friday, _____, at 3:30 p.m. to pick up the copies]." *See Appendix Sample B.*

Ask if your district has a public records request form. If so, use the district's form. *See Appendix Sample C.*



Failure to Respond “Promptly” to a Public Records Request is a Denial of the Request

Arizona law does not specify a specific time for responding to a public records request, but failure to respond “promptly” is deemed a denial. See A.R.S. § 39-121.01(E). The public is entitled to inspect records within “a reasonable time” after a request is made. “Promptly” and “a reasonable time” are not defined. If the district or other public body denies your public records request, send a second written request. See *Appendix Sample D*.

Any person who has requested and been denied access to or copies of a public document may appeal the denial through a special action in superior court. A person who has been wrongfully denied access to public records may sue the public body for any resulting damages. Attorney fees and costs are available to the prevailing party. If the court determines that the denial was done without substantial justification, primarily for delay or harassment, or to expand or delay the proceedings, the court may award double damages and other legal costs, including attorney fees – against both the school district and its officers. See A.R.S. §§ 39-121.02; 12-349.

Do not be surprised if the district takes procedural steps to delay your request. Some districts require that the request forms be notarized, which is not a legal requirement. Others charge very high copy fees.

Frequently Asked Questions

May a public body charge for the inspection of documents?

No, there is no charge for inspecting documents.

Can the public body charge me for copies?

Yes. A person requesting copies for a non-commercial purpose may be charged a copying fee. Expect 50 cents to \$1.00 per page. Ask for electronic copies, which may be free.

Can Districts charge me for obtaining the records?

If the public records are requested for a non-commercial purpose, then no, the public body may not charge for the cost of searching the records. *Hanania v. City of Tucson*, 128 Ariz. 135, 624 P.2d 332 (Ct. App. 1980); Ariz. Att’y Gen. Op. I86-090. The public body also cannot charge for inspection of the record, labor, overhead costs, or any fee to examine or review a record to determine whether the record is disclosable. If the public records are requested for a commercial purpose, the charge may be appropriate.

Can Districts charge me for redacting confidential information?

No. A public body may not charge for inspection of documents. This applies even if the public body must redact information before making the records available for inspection.

How long does the District have to provide the records requested?

It depends on what is reasonable under the circumstances. Criteria that will be taken into account includes: the agency's resources, the nature of the request, the content of the records (particularly whether information must be redacted), and the location of the records (for instance, whether the records are stored off site). That said, mere inconvenience does not justify delay and records should be provided as they become available.

Can the District withhold a record because it contains some non-disclosable information?

No. The District is required to separate or redact the parts of the record that are non-disclosable and provide the rest.

Are all emails sent from, or received on, a government computer a public record?

No. While the presumption is that everything created or received on office time with office equipment and personnel constitutes a public record, the nature and purpose of the document determine its status as a public record. The Supreme Court concluded that purely personal e-mail, that has no relationship to official duties, is not automatically a public record just because it was on a government computer and email system. *Griffis v. Pinal Cty.*, 215 Ariz. 1, 156 P.3d 418 (2007).



Appendix

SAMPLE A

Request to Examine Records

(Your address)

(Date)

Custodian of Records *(Business Manager or Superintendent)*
XYZ School District *(District address)*

Re: Public Records Request

To Whom It May Concern:

I want to examine certain public records, pursuant to A.R.S. Sections 39-121 through 39-128. I will not use the documents for any commercial purpose.

1. _____ , and any related documents or correspondence.
2. _____
3. _____

The requested records are public and available to anyone upon reasonable request. I will be at the District office (or other designated location) to review the records on (date) at (time).

As you are aware, Arizona law requires the District to provide these records promptly. If there is any difficulty in providing these records at the requested time, please notify me immediately. Upon review of the documents, I may request copies of some or all of them.

Thank you for your assistance.

Sincerely,

(Signature)

(Your Name)

Copy: *(Name)*, AEA Organizational Consultant *(optional)*



SAMPLE B
Request for Copies of Records

(Your address)

(Date)

Custodian of Records *(Business Manager or Superintendent)*

XYZ School District *(District address)*

Re: Public Records Request

To Whom It May Concern:

I request copies of certain public records, pursuant to A.R.S. Sections 39-121 through 39-128. I will not use the documents for any commercial purpose.

I enclose a check for \$___ payable to (XYZ) School District. Please use these funds to defray copying and postage costs and keep any overpayment.

Please send me a copy in hardcopy [via PDF] of the following documents:

1. _____ , and any related documents or correspondence.
2. _____
3. _____

As you are aware, Arizona law requires the District to provide copies of these records promptly. If there is any difficulty in providing these records promptly, please contact me immediately at the above address. Unless I hear from you, I will expect a copy of the records by *(date)* (one or two weeks).

Thank you for your assistance.

Sincerely,

(Signature)

(Your Name)

Enclosure: Check for \$_____

Copy: *(Name)*, AEA Organizational Consultant *(optional)*



SAMPLE C

Request Using District's Public Records Request Form

Some districts require a specific public records request form. If the district uses a standard form from the Arizona School Boards Association, it is attached as Form KDB-E. Double-check the correct form with your District at <https://policy.azsba.org/asba/browse/allmanuals/welcome/root>

Fill out the district's form and send it with the following sample letter.

(Your address)

(Date)

Custodian of Records *(Business Manager or Superintendent)*

XYZ School District *(District address)*

Re: Public Records Request

To Whom It May Concern:

I enclose a Public Records Request using the District's form _____ (KDB-E).

(Option 1: Request to review documents) I will be at the District office
(or other designated location) to review the records on *(date)* at *(time)*.

OR

(Option 2: Request for printed copies) I enclose a check for \$____ payable to
(XYZ) School District. Please use these funds to defray any copying and postage
costs and keep any overpayment.

(Option 3: Request for electronic copies) Please forward electronic copies of the
requested records in PDF to *(email address)* by *(date)* and *(time)*.

As you are aware, Arizona law requires the district to provide copies of these
records promptly. If there is any difficulty in providing these records at the re-
quested time, please notify me immediately. Unless I hear from you, I will expect
to receive the copies by *(date)* *(within one or two weeks)*.

Thank you for your assistance.

Sincerely,

(Signature)

(Your Name)

Enclosure: Public Records Request Form, Check for \$_____

Copy: *(Name)*, AEA Organizational Consultant *(optional)*

SAMPLE D

Repeated Request for Documents

(Your address)

(Date)

Custodian of Records *(Business Manager or Superintendent)*

XYZ School District *(District address)*

Re: SECOND REQUEST Public Records Request

To Whom It May Concern:

I am making my _____ (second or third) request to (review or receive copies of) public records. Enclosed please find a copy of my previous public records request, dated _____. Please comply with my request immediately in order to avoid a serious violation of Arizona law.

As you are aware, Arizona law requires that public records be provided “promptly” upon request. However, I have not yet (been permitted to review the requested documents or received copies of the requested documents). “Access to a public record is deemed denied if a custodian fails to promptly respond to a request for production of a public record.” A.R.S. Section 39-121.01(E). Any person who is wrongfully denied access to or the right to copy a public record may bring a special action in superior court and seek damages, including attorney fees. See A.R.S. Section 39-121.02.

Perhaps the failure to respond to my request was a simple oversight. If so, then this matter can be resolved very simply and amicably. If not, and the records are not provided promptly, I will seek legal counsel and consider pursuing other legal options.

Thank you for your assistance.

Sincerely,

(Signature)

(Your Name)

Enclosure: Previous Public Records Request

Copy: *(Name)*, AEA Organizational Consultant *(optional)*

Jarrett Haskovec, AEA General Counsel *(optional)*



KDB-E ©

EXHIBIT

Public's Right to Know / Freedom of Information

REQUEST FOR PUBLIC RECORDS OF THE SCHOOL DISTRICT

Note: It is not required by law that this form be filled out by a person requesting public records. The District may request the document be filled out or the District may use the document internally as documentation of public records requests.

Name _____ Date _____

Address _____
STREET

CITY _____ STATE _____ ZIP _____

Phone: Home _____ Work _____

Email _____

Nature of request:

- Opportunity to review records
(no original record may leave the custodian's office)
- Copies of records.

Please read and sign the following statement:

I have requested public records of the School District for a noncommercial purpose. I understand that if the records should be used for a commercial purpose, a verified statement of the purpose must be submitted per A.R.S. 39-121.03.

Signature _____ Date _____

Notice: A fee will be charged for copying based upon actual cost for providing the information.

Records requested: (please be as explicit as possible as to the records you desire)



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A Final Note

For more information and assistance, contact your local association, arizonaaea.org/helpdesk, or your AEA Organizational Consultant.

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This booklet is a general guide for AEA members and is not intended to provide complete information or legal advice on specific problems. Changes in laws and cases may modify the information provided. To find Arizona statutes on the Internet, go to www.azleg.gov.



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4/04 (Rev. 9/1/21)

