



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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LEGAL UPDATE

December 15, 2017

To: Superintendents, Member School Districts (K-12)

From: Frank Zotter Jr. *FZ*
Sr. Associate General Counsel

Subject: Request for Employee Records from Parent's Foundation for
Education
Memo No. 41-2017

Our office has recently been contacted by a number of districts that have received identical requests (except for the name of the contact person) from an organization calling itself Parent's Foundation for Education, seeking various categories of public records relating to their employees. The requests want the information to be provided in the form of an Excel spreadsheet.

Districts have asked several questions about this request. I have compiled those questions below. The simplest way to provide this response seemed to be to draft this like a Frequently Asked Question page addressing some of the most common questions. This Update also includes a sample response that districts can use to reply to these requests.

1. Do we have to respond to a request from a party outside of California?

Yes. Public entities in California are required to respond to a public records request regardless of from whom or where the request originates. We advise districts to disregard where the requesting party is located and simply respond to the request.

2. Do we have to provide a response even if we do not have a record with the information requested in the format that they are asking for?

At one time, when public records were kept only as paper documents, a request could have been denied if the exact record sought did not exist as a paper document, because the Public Records Act does not require public entities to create new documents. But if information is electronic and a district itself can only get that data (at all) by giving its computers instructions about how to structure the output, then districts cannot object merely because the records are held electronically and must be produced according to a command from a human operator. Districts therefore should provide public records that are stored electronically, subject to two conditions.



First, the information does not have to be provided in a specific format (such as the Excel spreadsheet requested here).¹ If Excel is *not* the format in which your district maintains this data, but you are willing to provide it in that format, then you can charge this requesting party for the staff time necessary to convert it.² This includes the staff time necessary to produce a copy of the electronic record if their request requires that you create a program or perform some kind of data compilation or extraction beyond simply providing a copy in the format that you maintain it. If you have to convert this to Excel, for example, that would be a cost you could pass on to the requesting party.

Assuming that it will take significant staff time to provide the data in the Excel format, and before incurring any costs to do so, a district should calculate the staff time required and insist upon an up-front payment of the estimated costs of such a response. Districts should calculate the estimated time to do the computer work, multiplied by the hourly rate of the employee or employees who will do the work. For example, suppose it would take 50 hours of staff time to do this, and an employee's hourly rate were \$36.00/hr.

You should also include a multiplier to reflect the employee(s)' benefits. This is often around 30%-33% of the baseline hourly rate. In the example given, the employee's normal hourly rate of \$36/hr would be multiplied by .33, which would come to \$48/hour. Thus, in this example, if it would take approximately 50 hours to prepare the requested document, $50 \times \$48/\text{hr} = \$2,400$ that the district could demand as an estimated up-front cost. If it ends up taking more time, then the agency can bill for the difference; if it ends up taking less, it should refund the difference.

If the data must be redacted to exclude confidential information, that is also a recoverable cost. The time to redact any confidential information should be factored into the estimated number of hours.

We emphasize, however, that districts do *not* have to provide the records in Excel unless that is the format in which they are maintained. It would be acceptable to make the records available in a different electronic format if that is the format in which they are normally kept.

3. Which categories of records do we have to produce? Which are objectionable?

The first seven categories — the employees' names, where they work, their job titles, and (for teachers) the grade levels, areas of instruction and certification — all seem to meet the general definition of a public record. Past court cases have held that employees' names are not confidential, and the other information in those first seven categories is normally public information, too. Likewise, the last three categories (hire date and years of experience, plus salaries) are also public information are public information. Districts can interpret that last

¹ Government Code § 6253.9, subd. (a)(1) provides (emphasis added), "The agency shall make the information available in any electronic format in which it holds the information." Likewise, subd. (a)(2) of the same statute provides (emphasis added), "Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format."

² See Government Code § 6253.9, subd. (b) provides (emphasis added), "Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record"



category, however, as seeking only gross salary, and not “all sources of income,” as is often requested by organizations like Transparent California.

As for an employee’s work e-mail address, many districts make these e-mail addresses available on their websites (or they are available on the website of a given County Office of Education). If employees’ e-mails are already available online, then an acceptable response is to direct the requesting party to the location on a public website where that information can be found.³

If a district has not put its e-mail addresses online and does not want to release them, an argument can be made that providing them makes the e-mails more susceptible to spamming, and therefore lessens their usefulness as a work tool. The objection to making them public would be based on Government Code § 6255, and such an objection is included in the sample response.

All of the other categories are objectionable. Government Code § 6254.3 specifically provides that home addresses, home telephone numbers, personal cellular telephone numbers of public employees are not public records. Nor are personal e-mail addresses public information unless the employee uses them to transact public business.

As for the request for an employee’s race, sex, or ethnicity, that information would arguably be confidential under either Govt. Code § 6254, subd. (c) or the “catch all” statute, Government Code § 6255. Both of them require that a public entity balance the “public’s right to know” against the employee’s right to privacy protected by Cal. Const. art. I, § 1.

You should object to each category of records you do not intend to provide and cite the statutes above as the basis for doing so. The accompanying sample response letter contains such objections. You also should determine the difficulty of providing the other information in the Excel format, and if it will be expensive or time-consuming to do so, you should request the deposit discussed above.

Finally, the initial response should be made within 10 calendar days of when a district received this request. You do not have to provide any records or information along with your initial response, but instead should provide them as soon as reasonably practical. Given that the response date for this is just before winter break, districts can give an estimated response date in January, or whenever their other work will reasonably permit a response.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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³ See Govt. Code § 6253, subd. (f).

[District Letterhead]

[Date]

Parent's Foundation for Education
[Name of Requesting Party]
P.O. Box no. 7162
Austin, TX 78713

Re: Public Records Act Request Received [date] Seeking Records of District's Employees

Dear [Mr/Ms.] [name]:

You have submitted a Public Records Act dated December [date], 2017 that was received by the District on [date]. Your request seeks, in electronic format, and specifically in the form of an Excel spreadsheet, the following seventeen categories of records about each District employee:

1. Campus (or office building name, for staff)
2. First Name
3. Middle Name
4. Last Name
5. Position
6. Grade Level(for teachers)
7. Subject Area taught (for teachers)
8. Certified in Area of Instruction (for teachers)
9. Home Address
10. School Email
11. Personal Email
12. Personal Phone Number
13. Gender
14. Race/Ethnicity
15. Hire Date
16. Years of Experience
17. Current Salary

The District will provide the information as requested in requests nos. 1 through 8 (Campus through Certified in Area of Instruction). The District will also provide the information in the last three categories of information (Hire Date, Years of Experience, and Current Salary). [The District will also provide the work e-mails for each employee **OR** The e-mails addresses for each employee can be found on the Internet at this website address:
_____]

The District objects to providing the records sought in the remaining categories. A public employee's home address, personal telephone number, and personal e-mail address are exempt from disclosure under Government Code § 6254.3. An employee's personal e-mail address is also confidential under § 6254.3 unless it is used to conduct District-related business. The

District is unaware of any employees using personal email address to conduct District-related business.

[IF THE DISTRICT OBJECTS TO PROVIDING WORK E-MAIL ADDRESSES:]

[The District objects to providing all employee e-mail addresses in response to a public records request. The District generally does not publicize its e-mail addresses because it believes that doing so makes those addresses more susceptible to unsolicited e-mails, thereby placing its servers at an increased risk of computer viruses and malware and distracts employees from their work-related responsibilities. This request is denied under Government Code § 6255, as the public interest in withholding disclosure of the requested information outweighs the public interest in disclosure.]

The District objects to identifying the race, sex, or ethnicity of any of its employees. **[IF ACCURATE: The District's records do not identify the race or ethnicity of specific employees.]** The District *[also]* takes the position that those three categories of personal information do not constitute "information relating to the conduct of the public's business" as the term "public records" is defined in Government Code § 6252, subd. (e).

To the extent that one can make the argument that they do, they would also be exempt from disclosure under either Government Code § 6254, subd. (c) as a personnel records whose disclosure would constitute an unwarranted invasion of personal privacy, or alternatively under Government Code § 6255, in that the public interest in withholding disclosure of that information outweighs the public interest in disclosure. As provided by Government Code § 6253, subd. (d), to the extent that any part of this request is deemed to have been denied under § 6255, the person responsible for that denial is the undersigned *[or identify other official]*.

With respect to your request that these records be produced in the form of an Excel spreadsheet **[CHOOSE ONE OF THE FOLLOWING]**:

[A] the District has determined that it will take approximately *[no.]* hours of staff time, at an estimated hourly rate of *[hourly rate]* per hour to assemble its records into such a spreadsheet, for an estimated total of \$.**00**. As provided in Government Code § 6253.9, subd. (b), as the party requesting these records, you are responsible for such costs as a condition of the District performing that assembly. Please remit the total of \$.**00** payable to the District and the District will assemble those records as requested. Once the District receives that payment, we will provide an estimate of when the records will be made available.

[B] the District will be unable to expend the staff time to assemble these records per your request into an Excel spreadsheet. Instead, as required by Government Code § 6253.9, subd. (a), the District is herewith providing you with the requested records in the *[identify format]* computer format in which it maintains these records.

[C] the District will be unable to expend the staff time to assemble these records per your request into an Excel spreadsheet. Instead, as required by Government Code § 6253.9, subd. (a), the District will provide you with the requested records in the *[identify format]* computer format no later than *[e.g., January 31, 2018]*.

[NOTE TO DISTRICTS: *Options B and C above presuppose that the District is going to provide the data only in its “native format.” Except for redaction of any confidential information, a district is not permitted to charge for that except a nominal charge for, e.g., the CD-ROM on which such data might be mailed. Nevertheless, if a District must redact information even in the “native format,” it may still incur recoverable costs for such redaction, in which case a combination of the language of Option A and one of the two other options may be used to seek those charges up front before undertaking the redaction.]*

Sincerely,

[Name]
Superintendent, [District]

OR

[Name]
[Trustee, District]