



Public Records Request Update: Narrowed Request and Additional Guidance

Earlier this month, more than 600 charter school and school districts across the state received a public records request from Maria Polletta, a reporter for the Arizona Center for Investigative Reporting. The request sought five years' worth of discipline and attendance data broken down into multiple specific demographic categories. Many schools found this request to be burdensome, especially given the extra operational and staffing challenges many are facing now and the fact that other entities, including the Arizona Department of Education and the Office of Civil Rights, collect much of the same data.

On behalf of all charter schools that received the request, the **Arizona Charter Schools Association** engaged Osborn Maledon to discuss these concerns and to determine whether Ms. Polletta would be willing to narrow the scope of her request.

Revised Request and Exempt Schools. Our efforts were successful, and Ms. Polletta has both agreed to seek some of the information contained in her original request from ADE and has reduced the scope of her original request. Her new request, which you may have received directly from her, is as follows:

- Disciplinary data capturing in-school and out-of-school suspensions, expulsions and transfers (including for irregular attendance or truancy) for the 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22 (to date) academic years.
 - Data should be broken down by race/ethnicity, gender and disability status, and include reason for disciplinary action.
 - For suspensions, please include number of days.
- Court referral data for truancy/excessive absences for the same period, broken down by the same demographic subgroups. (If zero, we're asking them to tell us as much.)

Additionally, Ms. Polletta has confirmed that she is **not** requiring a response from ADE-designated alternative schools. If your school is an alternative school, you should only respond to the request to indicate that you are an

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alternative school and therefore understand that you need not fulfill the records the request.

Response Guidance. In our January 7, 2022 [Client Alert](#), we outlined some guidance for schools to respond to Ms. Polletta's request. We reiterate that guidance below, along with some additional tips. This guidance is not intended to be a substitute for legal advice regarding your school's specific situation, and you should consult with your legal counsel if you have questions about your school's response.

1. **You must respond.** If you received the request and are not an alternative school, you must respond to the request in some way, even if it just to indicate that you have no responsive documents. You cannot and should not ignore the request.
2. **Your response must be "prompt."** A person making a public records request does not get to establish a deadline for your response. Instead, Arizona's public records law requires you to respond "promptly." Whether a response is prompt or not is situation specific and, among other things, depends on the other demands being placed on your school staff. Although the request has been narrowed, it is still requesting five fiscal years' worth of information, and determining what documents exist and compiling them may take some time for your school staff. Although the time necessary to do this work will vary greatly from school to school, we believe that most schools should be able to produce the requested documents within two months. If your school requires more time than this, please be sure you can articulate the reasons for the delay in the event your promptness is challenged.
3. **You do not have to create any documents to respond to the request.** The public records law only requires that you provide documents that currently exist; it does NOT require you to "create" documents, even if you could create such documents.

However, the distinction between documents that currently exist and those that must be created is nuanced for electronically stored data. The distinction generally turns on whether the data: (a) merely needs to be "accessed," or (b) must first be "compiled or aggregated." If you have a database in which responsive data is already compiled and sorted/stored and only needs to be "accessed," you likely have an *existing document* that must be produced. But if you must "compile or aggregate" data from an unsorted database in order to collect responsive information, this is akin to *creating a new document*, which is not required by the public records law. In the latter circumstance, you may wish to respond by indicating that you do not have any documents that are responsive to the request.

4. **You may already have some of the information being requested.** Schools are required to submit much of the requested information to OCR in connection with its Civil Rights Data Collection (CRDC), and data collection for the 2020-21 school year is underway. Although CRDC has not collected data for all of the fiscal years covered by the request, the data that your school provides to Ms. Polletta should be the same as any data you provided to CRDC. Currently, CDRC only has data for the 2017-18 school year publicly available.

If your school maintains its CRDC-reported information in a database that is easy to print or convert to a shareable format (like a .pdf), this may be the most efficient way to fulfill the records request, at least for certain of the school years. However, as noted above, you need not create new documents.

5. **You do not have to/cannot provide student records.** If the only responsive documents you have are students' educational records,

and the information is not compiled in any other documents, you do not have to produce those educational records, as they are exempt from public records requests. You should also ensure that any documents that you provide do not contain student identifiable information. That information should be redacted.

6. You cannot charge for staff time, but only ask for reimbursement for hard copies of documents. Because the request is for a noncommercial purpose, you cannot seek reimbursement for your staff time to gather, review and redact the documents. If you provide “hard copies” of documents, you can charge a nominal fee (typically 25 cents per page) for the documents. However, Ms. Polletta has requested electronic copies of the documents, and if you can provide them in that format (*i.e.*, without copying costs), you should. However, you should provide documents in a format that cannot be manipulated (like .pdf) or that does not contain additional information hidden in cells (like an Excel spreadsheet).

If you have specific questions about your response or need additional guidance, you should consult with your legal counsel, whether that is us or someone else. And many thanks to the Arizona Charter Schools Association for making this work on your behalf possible!

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