COVID-19 FOIA Guidance  
April 10, 2020

Executive Order 2020-38 temporarily suspends response timeframes for specific public record requests. Under the EO, a public body must respond in writing to a request received at its physical office via mail, hand delivery or facsimile within 10 business days after actual receipt of the request. This temporary change also applies to appeals on denials of records and excessive fees charged for records requests.

A quick summary:

- For FOIA requests received via mail, hand delivery or by facsimile, school districts have five extra business days to respond to the request.

- Under EO 2020-38, a FOIA request or appeal sent by mail, hand delivery or by facsimile is not “received” until an employee of the school district “physically opens the envelope containing the request or physically takes the faxed request from the fax machine.”

- Note that the temporary change does not apply to FOIA requests received by email. If a public record request is sent to a school district through email, the school district must still respond to the request within five business days. For the purpose of counting the days when responding to an email request for public records, the request is not “received” until one business day after the transmission of the message. If, however, an email request is filtered into a spam or junk folder, then the request is not considered “received” until one business day after the school district becomes aware of the request.

- The order does not change the definition of what constitutes a “business day.” Based on Attorney General Opinion No. 7172, “five business days” means five consecutive weekdays, other than Saturdays, Sundays or legal holidays, and not five consecutive days on which the particular public body receiving the request is open for public business. Thus, even though school districts are currently subject to shelter in place and school building closure executive orders, a school district’s FOIA Coordinator must still respond to a public record request sent by email within five consecutive weekdays after receiving the request.

EO 2020-38 also permits a school district to extend the 10 business days for responding to a FOIA request, if necessary, to June 4, 2020 (or later if EO 2020-38 is extended by another executive order), if COVID-19, or emergency orders related to COVID-
If a school district receives a FOIA request via email and it is unable to grant a timely response to the request within five business days due to an executive order issued in response to the COVID-19 pandemic, instead of issuing a 10-business-day extension to respond to the request, the district may issue a notice extending the response timeframe up to June 4 or possibly later.

If a FOIA request requires in-person efforts, such as an in-person search, inspection, examination, preparation or production of public records by the requestor or school district, EO 2020-38 allows the district to defer that portion of the request until June 4, 2020 (or later if EO 2020-38 is extended by another executive order). The deferral and the reason for it must be explained in the school district’s response to the FOIA request. The response must also provide notice that the FOIA request may be amended to exclude the deferred portion of the request so that it may be processed sooner.

If a school district cannot produce the requested public records by using electronic means, the district may defer the production of the records until June 4 or possibly later, which would require providing notice of the deferral to the requester and giving that individual an opportunity to amend his or her public records request.

Lastly, EO 2020-38 proclaims that “[i]t is the public policy of this state that, during the COVID-19 states of emergency and disaster, public bodies continue to respond to request for public records as expeditiously as possible and, to the extent practicable, by using electronic means.”

If you have additional questions, please contact MASB Legal Counsel/Director of Labor Relations & Policy Brad Banasik, J.D., at bbanasik@masb.org or 517.327.5929.