

To: Helen A. Boyer
Public Records Officer
Bellevue School District No. 405
publicrecords@bsd405.org

May 6, 2021

RE: 1st installment, addressing recorded "school board meetings" and "classroom sessions."

Hello Ms. Boyer,

Please see my responses to your 1st installment and answers to your requests for clarification:

With respect to video recordings of school board meetings

Videos of school board meetings are posted on the District's website. You may retrieve them as follows:

Go to <https://bsd405.org/about/school-board/>. Scroll down and select "Go to BoardDocs." In BoardDocs, select "Meetings" from the ribbon at top right. On the left, use the dropdown menu to select the date of meeting in which you have an interest. When you select the date of any Regular Meeting of the Board of Directors, an icon labelled "Watch video" will appear. In most cases, these video recordings contain audio content only. Records referred to may be viewed by clicking on the "View the Agenda" icon.

Response: Thank you.

With respect to recorded classroom sessions

The District does not use "google classroom sessions." Further, where students are present or referred to in any recorded classroom session, those records are fully exempt under RCW 42.56.230(1) (personal information in any files maintained for students in public schools); and under RCW 42.56.070(1) (exemptions authorized outside PRA) and the Family Educational Rights and Privacy Act (FERPA), 20 USC section 1232g (education records or any personally identifiable information in education records is exempt from disclosure to third parties without adult student or parent consent).

Response:

With all due respect, while digital video recordings where students are present or referred to certainly could be wholly exempt from disclosure to third parties, this is certainly not always going to be the case. Public records act exemptions are subject to very specific State and Federal statutes and circumstances.

The request for copies of any digital video recordings of classroom sessions for the requested period of time is not necessarily exempt in whole. The District has the responsibility to search for digital video recordings of classroom sessions and then redact student information where appropriate under statute, then producing the remainder of the non-exempt record or in this matter digital video file.

Quite probably digital video recordings wholly or partially redacted by the District based on specific exemptions would still provide the requestor the name of the video file, the date and time of the

recording, the length of the recording, the place of recording, the method of recording, the storage location of the digital video file itself, metadata not subject to redaction, and more.

From the BELLEVUE SCHOOL DISTRICT – Public Records Request Website:

<https://bsd405.org/departments/records/public-records/>

“If the record requested for inspection and/or copying contains both information exempted from disclosure and nonexempt information, the District will produce as much of the record as possible, with the exempt portion redacted, and will provide a written explanation for the redaction.”

Please search for and provide digital video recordings of classroom sessions and redact where appropriate.

Generally, with respect to other types of recordings

Please see the following links to the District's website, where recent District-wide town hall meetings and other types of recordings may be or may have been posted Facebook, Twitter, and Instagram <links omitted>

Response: Thank you.

Clarification Questions

Assembly and review work is proceeding with respect to the other types of recordings you have identified, i.e., "internet-based video calls," "meetings," "training sessions," and "town halls." Before the District will be able to proceed, your answers to the following clarification questions will be required.

Clarification Questions

1. Some "town halls" are conducted at the District level and some are conducted at a school building level. The District has 29 schools, any of which may have conducted and recorded "town halls" with its student and parent communities. Many town hall meetings, especially at the building level, are likely to contain information protected by FERPA (cited above). Please advise if you are interested only in recordings of District-wide town hall meetings.

Again, please refer to my response regarding the production of digital video recordings of classroom sessions and Bellevue School District policy regarding providing as much of the record as possible, with the exempt portions redacted, and then providing a written explanation for any redactions.

I am requesting all digital video recordings for the time period specified.

2. Digital recordings of "internet-based video calls, meetings, [and] training sessions" are not centrally maintained. Retrieval of such recordings would require communication with approximately 2,500 District employees who may have recorded such a call, meeting, or training session. The volume of potentially responsive records may be exceedingly high and may require hundreds or thousands of hours of content review to identify exempt material. If exemptions apply, a technologically complicated and extremely time-consuming redaction process may be required, for which you would likely have to pay, because the District does not

have the technological and staff resources to perform such redactions, especially on a massive scale. Please clarify whether you will continue to seek such records, and, if so, specify your request, e.g., by type of content, dates, or originator, so that the District can efficiently provide you with information that is in fact meaningful to you.

It is unfortunate the District has chosen not to centrally maintain digital video recordings subject to public record requests. It may be prudent for the District to draft policy (should no policy currently be in place) governing the approximately 2,500 District employees who are directed or may choose to produce digital video recordings subject to public records requests.

As you know under the Public Records Act, agencies cannot charge for the time staff time spend locating a public record or making it available for inspection (including any time spent reviewing or redacting records).

The Bellevue School Board found that it would be “unduly burdensome to calculate the actual costs of providing copies of public records, given the multiple electronic and manual devices used to do so, as well as the fluctuating costs of District supplies, equipment, and labor.”

Accordingly, the District adopted the “Statutory default cost” option for calculating fees:

“The District has determined it will not calculate actual costs for copying records for the reasons set forth in Policy 4040. The District will apply the fees and costs as authorized in RCW 42.56.120 and as published in the agency's fee schedule.”

The fees for production of digital video recordings under the statutory default cost option are as follows:

Electronic Documents: \$0.05 per every four electronic files and/or email.

Transmission of electronic records: \$0.10 per gigabyte.

A 1 Hour time length digital video recording of a ZOOM online video meeting results in a digital video file of approximately 1.2 gigabytes in size. Using these approximate calculations (4) 1-hour digital video recordings (1.2 Gb in size) produced by the district would generate fees of (4 files) x (.05) x (.10) = .60 or 60 cents. The fees may be marginally higher should the District choose to produce the requested files on CD-ROM. The District may charge the requestor for the cost of the CD-ROM itself as well as any postage.

If in the regular course of agency business the District and it's approximately 2,500 public employees have the technological capability to record and store digital videos on publicly owned computers and devices, the District certainly has the staff and technological ability to produce these digital videos subject to the Public Records Act.

To answer your question “Please clarify whether you will continue to seek such records, and, if so, specify your request” I do continue to seek such records. I have specified the records requested for a specific time period in my original public records request.

For efficiencies sake I would suggest the District designate a central digital repository on District computer servers to store all digital video files subject to public record requests and then to instruct all District employees to upload any digital video recordings for the requested time period to the designated central digital repository for review and production under the PRA.

Of course recording, storing, and digitally transmitting digital video files is not technologically complicated and also comprises a regular function of various District employees on a daily basis.

3. Digital recordings of "training sessions" are likely to be subject to copyright protection, and trade secret or other proprietary exemptions. A consideration of the release of such recordings would in most cases require review by the content owner or originator, to identify protected content. If exemptions apply, a technologically complicated and extremely time-consuming redaction process may be required, for which you would likely have to pay, because the District does not have the technological and staff resources to perform such redactions, especially on a massive scale. Please clarify whether you will continue to seek such records, and, if so, specify your request, e.g., by type of content, dates, or originator, so that the District can efficiently provide you with information that is in fact meaningful to you.

Copyright is subject to certain limited exemptions and the District should redact accordingly. I do continue to seek these records. Please see my earlier responses.

4. Additionally, although you state that your request is not commercial in nature, in many cases the digital recordings of "internet-based video calls, meetings, training sessions [and] town halls" would inherently contain lists of individuals, identifiable by the fact that they would in many cases be shown as signed in to the call, meeting, training session, or town hall. Therefore, your request for such materials requires a commercial purposes inquiry. Please complete the attached Commercial Purpose Declaration within 30 days if you intend to proceed with these portions of your request. If you do not return the Declaration, your request will be closed.

Response regarding your commercial purpose inquiry and declaration:

The PRA prohibits the disclosure of "lists of individuals" for a commercial purpose (RCW 42.56.070(8)). Digital video recordings by their very nature do not contain an electronic record that can be sorted as could an Excel spreadsheet or Word document. I renew my declaration contained in my original public records request: I am not seeking a list of any kind, nor a list of individuals or businesses.

In my original public records request I specifically declared the request was not being made for commercial purposes, a requirement of the Public Records Act. I incorporate by reference my original public records request and declaration dated 4-22-21:

"Request for digital copies of all internet video call recordings in the District's care, custody, or control recorded between the dates 01-01-20 through 4-22-21 (Bellevue School District)."

This declaration satisfies all requirements of RCW 42.56 regarding prohibitions on lists and commercial purposes.

This concludes my response to your requests for clarification.

I look forward to the District production of non-exempt digital video recordings.

Thank you.