

**Subject: PRR 04262021**

May 29, 2021

Hello Ms. Boyer,

Thank you for your communications dated 5-25-21 and 5-27-21.

My response is as follows:

**YOU STATED:**

**“Dear Requestor:**

**On behalf of the Bellevue School District, I am making a second installment to your request received April 26, 2021:**

**Digital copies of all video recordings of internet-based video calls, meetings, training sessions, town halls, school board meetings, and google classroom sessions in the District's care, custody, or control recorded between the dates 01-01-20 through 4-22-21.**

**Further with respect to the categories of video recordings of internet-based meetings, training sessions, town halls, and school board meetings, please see the following link to the District's YouTube channel:**

**<https://www.youtube.com/channel/UCb4Hoh9cTgXul7qYHH1nwmA>**

**You may sort by date on the Channel.”**

**MY RESPONSE:**

Thank you for the links to the District's website, YouTube channel, Twitter feed, Facebook and Instagram accounts. However please note, the original public records request is for “Digital copies of all video recordings of internet-based video calls, meetings, training sessions, town halls, school board meetings, and google classroom sessions...” The various links you have provided do not contain any digital copies of the video recordings originally requested. Also, the links do not provide information about what digital video files have been produced, and which have been withheld in their entirety, nor which digital video files have been edited and for what reason.

To be clear, this public records request is seeking digital copies of specific digital media files, not links to stream partial content of the original files without a detailed exemption log explaining what has been withheld and why.

**YOU STATED:**

**“Please advise if the extensive records you have been provided are sufficient for your purposes.”**

**MY RESPONSE:**

Hyperbole aside, no requested records (digital media files) have been produced. Links to 3<sup>rd</sup> party subscription based streaming media sites are not the records that have been requested.

**YOU STATED:**

**“The District has advised you that where students are present or referred to in any video call or recorded classroom session, those records are fully exempt. You cannot walk in off the street into a parent or student meeting with a teacher, or into a classroom of students. Similarly, you are not entitled to the content of digital video calls with parents or students, or to the content of a remotely conducted classroom.”**

**MY RESPONSE:**

With all due respect, any recorded digital video files (records) in the possession of the District where students are present or referenced are NOT FULLY EXEMPT. Rather these digital video files could potentially be partially exempt and some exemptions may be subject to redaction by the District. Any such exemptions applied are required to be recorded in an accompanying detailed exemption log for review by the requestor.

Examples of what may not be fully exempt in any digital media file: the name of the digital media file, the type of file, the size of the file, various unexempt portions of the file video content, the length of the recording, the date the file was created, and possibly much more.

All citizens are “entitled” to review and/or copy public records in the District’s care, custody, or control subject to redaction by the District based on valid legal exemptions. Exemptions which the District is required to detail in an exemption log provided to the requestor for review.

Question: Is the District’s position that all digital video files in which a student is present or referenced are fully exempt and therefore will not be produced?

Question: If in fact it is the District’s position is that digital video files in which a student is present are fully exempt, is the District going to provide the required detailed exemption logs to the requestor, listing which digital video files are exempt and why?

**YOU STATED:**

**“As set forth in my message to you dated May 3, 2021, a next phase of records production would require disruptive and time-consuming recovery from individual employees, added storage capacity, extensive and time-consuming copying of recorded video into redactable formats and/or for the purpose of creating a copy for redaction, and review, analysis, and anticipated redaction of exempt material. This is likely to require the purchase of hardware and software that is not presently available to nor within the technical expertise of staff that responds to public records. As I have advised you, the District is evaluating the costs of customized service charges that would be associated with those purchases and tasks. The copying is likely to require software and hardware purchases, training, and added staff. There may also be additional costs of storage devices and data transmission for which you would be responsible.”**

MY RESPONSE:

The District's responsibilities under the Public Records Act are clear. To address your comments point by point:

**“disruptive and time-consuming recovery from individual employees”**

Please see WAC 44-14-04003(3) “The agency should recognize that fulfilling public records requests is one of the agency's duties, along with its others.” These public employees created digital video files that are now public record. It is certainly not “disruptive” for public employees to produce identifiable public records.

**“added storage capacity”**

Question: Why the need for added storage capacity? Regardless, irrelevant under the Public Records Act.

**“extensive and time-consuming copying of recorded video into redactable formats and/or for the purpose of creating a copy for redaction”**

Again, irrelevant. All costs of preparation for responsive documents and any redactions if required is the sole responsibility of the District. No costs for collation or redaction may be passed on to the original requestor under the act. See WAC 44-14-07001:

WAC 44-14-07001 General rules for charging for copies.

(1) No fees for costs of locating records or preparing records for inspection or copying. An agency cannot charge a fee for locating public records or for preparing the records for inspection or copying. RCW 42.56.120.1 An agency cannot charge fees for a person to inspect or access records on the agency's public internet web site. An agency cannot charge a fee for access to or downloading records the agency routinely posts on its public internet web site prior to the receipt of a request unless the requestor has specifically requested that the agency provide copies of such records through other means. RCW 42.56.120 (2)(e).

An agency cannot charge a "redaction fee" for the staff time necessary to prepare the records for inspection, for the copying required to redact records before they are inspected, or an archive fee for getting the records from off-site. Op. Att'y Gen. 6 (1991). These are the costs of making the records available for inspection or copying and cannot be charged to the requestor.

**“This is likely to require the purchase of hardware and software that is not presently available to nor within the technical expertise of staff that responds to public records.”**

Untrue however if so, also irrelevant. As clearly stated, the District cannot assess fees for costs of locating records or preparing records for inspection or copying. The District is in possession of public records in the form of digital media files. These public records have been identified and requested per the Public Records Act and the District is required to produce these records in compliance with the act.”

**“As I have advised you, the District is evaluating the costs of customized service charges that would be associated with those purchases and tasks. The copying is likely to require software and hardware**

**purchases, training, and added staff. There may also be additional costs of storage devices and data transmission for which you would be responsible.”**

MY RESPONSE:

As I requested previously, please provide a detailed accounting of the customized service charge the District believes applies to this public records request. I believe once the District produces a detailed record of any proposed customized service charge it will be simple to demonstrate the District is in error, and no customized service charge applies to this public records request under the PRA (RCW 42.56).

**YOU STATED:**

**“If you require additional records, I estimate a next installment in response to your request will be September 23, 2021. This estimate considers the factors described above, as well as the fact that many of the staff from whom such records would be assembled will soon be leaving for the summer break.”**

MY RESPONSE:

As I previously stated, no requested records have been produced by the District to date, and my previous request for the District to provide a detailed accounting of any proposed customized service charge is still outstanding. District staff vacations do not relieve the District of its responsibilities under the public records act.

Additionally the District should advise all employees, volunteers, contractors, and any other 3<sup>rd</sup> parties who may have care, custody, or control of any digital video files originally requested in PRR 04262021 to preserve these public records until this request is resolved.

Please consider WAC 44-14-04003(9) as constructive notice:

“WAC 44-14-04003(9) Preserving requested records. If a requested record is scheduled shortly for destruction, and the agency receives a public records request for it, the record cannot be destroyed until the request is resolved. RCW 42.56.100.8 Once a request has been closed, the agency can destroy the requested records in accordance with its retention schedule.”

**YOU STATED:**

**“Additionally, the District cannot proceed further until it receives and has evaluated a completed and signed Commercial Purpose Declaration, for the reasons that have been explained to you. The Declaration is due on or before June 2, 2021.”**

MY RESPONSE:

I previously addressed your multiple requests for a signed “REQUEST FOR LIST OF NAMES” document.

Digital video files are not a “list” as defined in RCW 42.56.070(8).

The Commercial Purpose Declaration form (affidavit) which you have provided titled “REQUEST FOR LIST OF NAMES” does not apply to this Public Records request as no list of names was requested in the

original public records request and the District has the option to redact any names that might be displayed as a list in any digital video recording based on a valid exemption should there be one.

Question: Is it the District's position that PRR 04262021 – this request for copies of digital video files will not proceed without the requestor signing the District's "REQUEST FOR LIST OF NAMES" document?

At this point it certainly appears that the District is not applying a good faith interpretation of the statutes governing public records, nor providing "fullest assistance" and "most timely possible action" (WAC 44-14-04003(3)) in processing PRR 04262021.

The District is constructively denying the processing of this public records request. I formally request an immediate denial review of PRR 04262021 by District legal counsel. If in a reasonable amount of time a denial review by the District does not provide the relief requested, I reserve the right under RCW 42.56.550 to seek Judicial review of the District's position in Superior Court.

This concludes my response.

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

Thank you.