



# CARDINAL McCLOSKEY

## COMMUNITY CHARTER SCHOOL

### **Freedom of Information Law (FOIL) Policy**

- 1. Introduction** - The Board of Trustees of Cardinal McCloskey Community Charter School (CMCCS) is committed to furnishing members of the public access its records subject to the NYS Freedom of Information Law (FOIL). Therefore, the Board, consistent with state and federal law, provides a process for the review and copying of the schools' "FOILable" records (§2854(1)(e)).
- 2. Designation of Records Access Officer and Records Appeal Officer** - The CMCCS is responsible for ensuring compliance with FOIL. The School's Records Access Officer is the Business Manager. The School's Records Appeal Officer is the Principal.
- 3. Public Notice** - A FOIL notice containing the name and business address of the Records Access Officer, and the Records Appeal Officer, along with the location where records can be seen or copied, shall be posted in a conspicuous location at CMCCS (21 N.Y.C.R.R. § 1401.9).
- 4. Records Access Officer Responsibilities** – The Records Access Officer is responsible for ensuring that CMCCS appropriately responds to public requests for access to its records. The Records Access Officer shall ensure that the following actions are taken:
  - A. Maintaining an up-to-date and reasonably detailed list of all subject matter of all records in possession of CMCCS, whether or not available under POL §87(2), POL § 87(3)(c).
    1. The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought; and
    2. The subject matter list shall be updated annually. The most recent update shall appear on the first page of the subject matter list. The list may contain for example some or all of the following:
      - Student Health Records\*
      - Student Immunization Records\*
      - Student Medical Records\*
      - Student Accident Reports\*
      - Roster containing the name of each officer and employee, his or her public office address (school address), title and salary.
      - Record of the final vote of each trustee in each instance when school trustees vote (which should already be the minutes of board meetings being kept pursuant to the Open Meetings Law and charter monitoring plan).
      - Safety Records
      - School Safety Plan

- Reports of Fire Department Inspections
- School Contracts
- Management Contract Records
- Outside Contract Records
- SPED Contractor Records\*
- Personnel Files\*
- Generally\*
- Fingerprint Clearance Records\*
- Certification Records\*

\* All categories marked with an asterisk may contain personal and confidential or other information that should not be released pursuant to FOIL, the Family Educational Rights and Privacy Act or the Individuals with Disabilities Education Act (which are exceptions to FOIL).

- B. Assisting the requester in identifying requested records, if necessary;
- C. Locating the records and making a determination as to whether access will be granted in whole or in part; and
1. Making available for inspection those records that are required to be produced by law subject to redactions appropriate under law: or
  2. Denying access to the records in whole or in part, with a written explanation.
- D. The Records Access Officer may make available a copy of a requested record upon payment or the offer to pay established fees, in accordance with section 6.
- E. Upon request, the Records Access Officer will certify that a record is a true copy, or obtain such certification.
- F. Upon failure to locate records, the Records Access Officer will certify:
1. The School is not the custodian for such records; or
  2. The records of which the School is a custodian could not be found after a diligent search.
- 5. Location of Records and Hours for Public Inspection** - Public records shall be made available for inspection at CMCCS, 685 E 182<sup>nd</sup> St, Bronx NY 10457 weekdays between 9 AM and 4 PM. A prior appointment is necessary to review records and can be scheduled with the Records Access Officer.
- 6. Requests for Public Access to Records** - Written rules regarding how the public may obtain records are presented below and are consistent with POL § 87(1)(b).
- A. Requests for inspection must be in writing and addressed to the Records Access Officer via regular or electronic mail or facsimile. The Records Access Officer will acknowledge receipt and provide the requestor with the CMCCS staff person's name, title, and phone number to schedule an appointment at a mutually convenient date and time for inspection. Records or portions thereof which are prohibited from disclosure pursuant to FOIL will be redacted or omitted; the requestor will be notified of the reason(s) for the redaction(s) and of the procedures to appeal to

the Commissioner of Education. Inspections of records are made by appointment between the hours of 9:00 AM and 4:00 PM. If records are maintained on the internet, the requester shall be informed that the records are accessible via the internet and in printed form either on paper or other information storage medium.

- B. Every request for records that is received by any School employee must immediately be forwarded to the Records Access Officer for the latter's response. School personnel other than the Records Access Officer are not authorized to respond to request for records under FOIL, whether orally or in writing.
- C. A request must reasonably describe each record being requested. Whenever possible a person requesting records should provide information, including the date of the records, which will identify the records being requested.
- D. Pursuant to POL section § 89.3, within 5 business days of receipt of a FOIL request, the Records Access Officer will respond to that request, provided it has reasonably and with particularity described the record being sought as follows:
  - 1. If the request will be granted in whole or in part, a statement to that effect including, if practical, a copy of the requested record; or
  - 2. If the request will be denied, a written explanation of the reason for denial; or
  - 3. If a decision regarding the request has not yet been made, an acknowledgement of the request and a statement of the approximate date when it is anticipated that the request will be decided, which date shall be reasonable under the circumstances of the request, and, where appropriate, a statement that the request will be determined in accordance with subdivision §89(5) of the POL.
  - 4. When Cardinal McCloskey Charter School determines that it is going to provide some or all of the records sought by a FOIL request, *and* circumstances prevent the school from providing those records to the FOIL requestor *within 20 days of the date of the school's acknowledgement of the request* (not the date of the request), *the school must state in writing both* 1) the reason the school is not able to provide the record within the 20 days, *and* 2) a date certain (*not* an approximate date) by which the school will provide some or all of the records requested, *which must be "reasonable under the circumstances."*(POL § 89(3) as amended by Ch. 22 of L. 2005)
- E. In determining a reasonable time for granting or denying a request CMCCS, personnel shall consider at least the following: the volume of a request, the ease or difficulty in locating, retrieving or generating records, the complexity of the request, the need to review records to determine the extent to which they must be disclosed, the number of requests received by CMCCS, and similar factors that bear on the ability to grant access to records promptly and within a reasonable time.
- F. A failure to comply with the time limitations described herein shall constitute a denial of a request that may be appealed. Such failure shall include situations in which an officer or employee:
  - 1. Fails to grant access to the records sought, deny access in writing or acknowledge the receipt of a request within five business days of the receipt of a request;

2. Acknowledges the receipt of a request within five business days but fails to furnish an approximate date when the request will be granted or denied in whole or in part;
3. Furnishes an acknowledgment of the receipt of a request within five business days with an approximate date for granting or denying access in whole or in part that is unreasonable under the circumstances of the request;
4. Fails to respond to a request within a reasonable time after the approximate date given or within twenty business days after the date of the acknowledgment of the receipt of a request;
5. Determines to grant a request in whole or in part within twenty business days of the acknowledgment of the receipt of a request, but fails to do so, unless the agency provides the reason for its inability to do so in writing and a date certain within which the request will be granted in whole or in part;
6. Does not grant a request in whole or in part within twenty business days of the acknowledgment of the receipt of a request and fails to provide the reason in writing explaining the inability to do so and a date certain by which the request will be granted in whole or in part; or
7. Responds to a request, stating that more than twenty business days is needed to grant or deny the request in whole or in part and provides a date certain within which that will be accomplished, but such date is unreasonable under the circumstances of the request

## **6. Denial of Access to Records**

A. Denial of access to records shall be in writing, shall state the reason and advise the requester of the right to appeal to the individual or body established to determine appeals, [who or which] shall be identified by name, title, business address and business phone number.

B. If requested records are not provided promptly, as required in Section 4 of these regulations, such failure shall also be deemed a denial of access.

C. The CMCCS Board of Trustees has been designated to receive and determine appeals regarding denial of access to School records under FOIL.

D. Any person denied access to records may appeal in writing within thirty days of a denial.

E. The time period within which the Records Access Appeals officer must decide an appeal shall commence upon receipt of a written appeal identifying:

1. The date and location of request of records;
2. A description, to the extent possible, of the records that were denied;
3. The name and return address of the person denied access; and
4. Whether the denial of access was in writing or due to failure to provide records promptly as required by section 4(D).

G. Pursuant to POL §89.4, the Records Appeals Officer shall:

1. Fully explain in writing the reasons for further denial or provide access to the records to the requester within ten business days of receipt of the appeal; and
2. Cause to be transmitted to the Committee on Open Government a copy of each appeal received. The Committee on Open Government, which is a division of the New York State Department of State can be contacted as follows:

NYS Committee on Open Government  
Department of State  
One Commerce Plaza  
99 Washington Avenue, Suite 650  
Albany, NY 12231  
Telephone 518-474-2518

H. The Records Access Officer shall inform in writing the appellant and the Committee on Open Government of his or her determination within ten business days of receipt of an appeal. The determination shall be transmitted to the Committee on Open Government in the same manner as set forth subdivision (f) of this section.

**7. Fees** - CMCCS records are available for inspection at no cost to the public. Copies are available at the statutorily permitted duplication fee of \$.25 per page by check or money order made payable to the Cardinal McCloskey Community Charter School. (POL §87(1))

**8. FOIL Appeals** - Within 30 days of a denial, a FOIL requestor may appeal the decision of the school's Records Access Officer to the school's Records Appeals Officer, who must respond to the appeal within 10 days and copy the Committee on Open Government on both the appeal and the determination "immediately" after receipt or determination, respectively POL § 89(4). If the decision of the appeal is to still deny the request, the FOIL requestor may sue the school through an Article 78 proceeding in state court within 4 months of the appeal denial, (Civil Practice Law and Rules (CPLR) 217.) Under another new provision of the law, if a school does not follow the FOIL appeal procedures set forth in POL subdivision 89(4)(a), it will now constitute a denial of the FOIL appeal for purposes of allowing the FOIL requester to bring an Article 78 proceeding. A negative determination in an Article 78 proceeding could result in attorneys' fees and litigation costs being assessed against the school.

Any person denied access to a record may within thirty days appeal in writing to:

Cardinal McCloskey Community Charter School  
Attn: The Board of Trustees  
685 E 182 St.  
Bronx, NY 10457

### **Policy References**

Charter Schools Act (Education Law subdivision §2854(1)(e))

Public Officers Law Article 6: §87(1)(b), (2), (3)(c); § 89(3) amended Ch. 22-2005, (4)(a), (5).

21 N.Y.C.R.R. § 1401.9

Civil Practice Law and Rules (CPLR) 217).

ADOPTED: 4/15/19 & Revised