



Maricopa Community Colleges

Public Records Request Handbook

compiled by the Office of Public Stewardship



April 2017

The information contained in this handbook is for informational purposes only and is not intended as legal advice. It should not be considered legal advice, nor relied upon in lieu of seeking legal counsel.



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Reference Information



Acknowledgement

City of Tempe Public Records Request Handbook
<http://www.tempe.gov/home/showdocument?id=1657>

The use of information cited from the *City of Tempe's Public Records Request Handbook* does not create an attorney-client relationship and no warranty is made that the information is accurate, complete, in compliance with all applicable laws or up-to-date.

Arizona State Library, Archives and Public Records

Records Management Division

www.azlibrary.gov/arm

General Information

www.azlibrary.gov

Retention Schedules

<http://www.azlibrary.gov/arm/retention-schedules>

Electronic Records

www.azlibrary.gov/arm/guidelines-standards-and-statutes

Public Records Standards and Laws

<https://www.azlibrary.gov/arm/guidance-standards-and-statutes>

Commercial Requests for Student Information

Commercial requests are handled by the college's Admissions and Records/Enrollment Services office (for a single college) or the Office of Public Stewardship for multiple college requests. Commercial requests must be notarized. The *Application for Purchaser of MCCCD Student Information* form can be found online at:

<https://chancellor.maricopa.edu/public-stewardship/records-information/public-records>

MCCCD Resources

FERPA and College Records

<https://legal.maricopa.edu/ferpa-college-records>

Governing Board Policy on Public Records

<https://chancellor.maricopa.edu/public-stewardship/governance/administrative-regulations/6-board-resources/6.17-requests-for-public-records>

Public Records Request and Application for Purchaser of MCCCD Student Information forms

<https://chancellor.maricopa.edu/public-stewardship/records-information/public-records>

Media Relations

Federal Trade Commission–FOIA Handbook

<https://www.ftc.gov/sites/default/files/attachments/foia-resources/foiahandbook.pdf>

Investigative Reporters and Editors (IRE)

<http://ire.org/resource-center/foia/>

The Reporters Committee for Freedom of the Press

www.rcfp.org/

Society of Professional Journalists

www.spj.org/

National Freedom of Information Center

<http://www.nfoic.org/foi-center/>

Vendor Requests

Requests are handled by District Purchasing. The public records request form is also used for these requests and can be found online at:

<https://chancellor.maricopa.edu/public-stewardship/records-information/public-records>



Common Terms Defined

political subdivision

The Maricopa County Community College District (MCCCD) is a political subdivision of the State of Arizona. A political subdivision is a quasi-governmental agency with powers and duties established in the state constitution and in state statute. As a political subdivision, MCCCD is a public agency that must take measures to ensure public access to all operations. ARS §39-121 et. seq. establishes Arizona's public records law. *"Public records and other matters in the custody of any officer shall be open to inspection by an person at all times during office hours."*

public officer

Any employee of the Maricopa County Community College District is considered a public officer.

public record

What is, or is not a public record is defined primarily in case law. However, ARS §41-1350 states that: ***"All books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics...made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historic value of the data contained therein..."*** Any electronic (or e-records) that reside in electronic computer systems are also subject to records requests.

custodian of record

The party or area at a college or at the district office designated as being responsible for the maintenance and/or retention of specific records. The custodian of record will also oversee the review of records prior to release as well as the reproduction of records when requests for copies are made.

disclosure

To reveal, to make known or the make available for inspection. With the exception of student education records, the majority of records that are created are subject to review. Questions regarding disclosure should be directed to the Office of Public Stewardship.

non-disclosure

The act of, or decision made to not disclose a record. Public officials cannot arbitrarily decide what information not to disclose. Requests may be denied based upon the requirements established by state and federal law. In Maricopa, the types of records that are not subject to public records requests are student education records, dates of birth for employees and students, medical records, executive session and attorney-client privileged communications. Questions regarding non-disclosure should be directed to the Office of Public Stewardship.

redact

To make ready for release. Usually involves removing information from a public record that is considered to be confidential or otherwise not subject to disclosure. Redacting should be performed on copies of documents and not on the original.

non-commercial purpose

A request made for individual/public interest or as part of a legal request for documents.

Common Terms Defined (cont'd)

commercial purpose

ARS §39-121.03D—"Commercial purpose includes any use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from public records to another for the purpose of solicitation or for any purpose where the purchaser can reasonably anticipate the receipt of monetary gain from direct or indirect use of the record." **MCCCD determines the commercial value of the record.**

spoliation

Destroying records without lawful authority is a class 4 felony (ARS §38-421), as is destroying records while a legal investigation is in action or pending.



Purpose of the Handbook

It is the MCCCD's policy to comply with its obligations under the Arizona public records law timely, accurately and completely. This handbook is designed to assist Maricopa employees with complying with Board policy (*Board Resources 6.17: Requests for Public Records*, see **Appendices**, pg. 15). While this handbook attempts to outline the public records law, the types of documents that must be disclosed and the method for disclosure, there will be times when your questions cannot be answered by this handbook. In such cases, you should contact the Office of Public Stewardship at (480) 731-8880 or (480) 731-8882 for answers to your questions.

What is the Public Records Law?

Title 39

The Arizona public records law is found in the Arizona Revised Statutes §39-121, et. seq. The law applies to all public entities and political subdivisions, including MCCCD. One of the purposes of the public records law is to ensure that government entities are trustworthy and accountable to the public by giving the public a right of access to records concerning an official's or a public agency's activities.

Freedom of Information Act

The Freedom of Information Act (FOIA) is the federal version of the public records law. It is not applicable to local entities such as MCCCD. Courts have stated, however, that FOIA and the cases interpreting it are helpful in construing the state public records laws.

Definition of Public Record

Arizona law defines "public records" broadly and creates a presumption requiring the disclosure of public documents. To determine whether a document must be released, two things must be considered. First, is the document a public record? Second, if it is a public record, the presumption favors disclosure of the document. The nature and purpose of the document determines whether or not it is a public record. To be a public record, the document must be in our possession and have a direct relation to the government agency's activities. That means that most MCCCD records will be released upon receipt of a public records request. Few records, other than those of a purely personal or private nature, in the possession of a public agency or employee will not be considered a "public record." Notable exceptions here would include student records, which are protected by FERPA and medical records which are protected by HIPAA. A document not created by MCCCD but in its possession may also constitute a public record if it relates to a governmental purpose. The exceptions are discussed later in this handbook. For purposes of responding to a public record request, a public record that must be released includes the following:

1. A record that is made by a public official in pursuance of a duty, the immediate purpose of which is to disseminate information to the public, or to serve as a memorial of official transactions for public reference. Examples include:
 - a. Policies and Administrative Regulations;
 - b. Monitoring Reports;
 - c. Public announcements;
 - d. Letters to outside parties.
2. A record that is required by law to be retained, or necessary to be retained in the discharge of a duty imposed by law to serve as a memorial and evidence of something written, said or done. Examples include:
 - a. Minutes of meetings;
 - b. Meeting notices;

- c. Records or documents maintained by MCCCD created by other entities if they pertain to a governmental purpose.
3. A written record of transactions of a public officer in his office, which is a convenient and appropriate method of discharging his duties, and is kept by him as such, whether required by express provisions of law or not. Examples include:
 - a. Memorandums;
 - b. File notes;
 - c. Internal communications, including certain email (see discussion under Email Communications).
4. Records required to be disclosed pursuant to statute, the Arizona courts or opinions of the Attorney General's Office. Examples include:
 - a. Official Board minutes;
 - b. Records of expenditures of public monies (salary records of public employees are specifically included);
 - c. Books of account and final audits;
 - d. Investigative reports, unless MCCCD can specifically show that release of the report would impair an ongoing investigation or interfere with official duties of law enforcement and/or a prosecuting agency;
 - e. Electronic databases and computer backup tapes made or received by any governmental agency in connection with the transaction of public business;
 - f. Preliminary, tentative and final budgets;
 - g. Final selection list of candidates who are seriously being considered and are interviewed for a position;
 - h. Records should have the following information redacted: social security numbers, employee ID numbers, student ID numbers, dates of birth, home telephone numbers and home addresses. MCCCD employees and customers can request that their address and telephone number be kept confidential if they can provide a reasonable basis for the confidentiality;
 - i. Reports of industrial injuries.

Different Types of Public Records Requests

Under Arizona law there are three basic types of public records requests. The first is a non-commercial public records request, which is the most common request MCCCD and the colleges receive. The second is a commercial records request. Finally, there are custom requests.

Electronic Records and Public Records Requests

Electronic records are any recorded information that has a value to MCCCD for conducting its business and meeting its legal obligations. A number of the records cited above are electronic records and are subject to the public records laws. Additional electronic records can include documents stored in such devices as Smart Cell Phones, electronic calendars, Powerpoint presentations, etc. It is necessary to evaluate any request for electronic documents like any other request. Should there be any question as to whether or not any electronic record should be produced pursuant to a public records request, contact the Office of Public Stewardship or Office of General Counsel.

When a public entity maintains a public record in an electronic format, the electronic version of the record, including any embedded metadata, is subject to disclosure under public records law. Provide the requestor with a copy of the record in its native format unless the nature of the request precludes any need for the electronic version. Metadata refers to the hidden data that usually can only be seen when a digital document is viewed in its native format using the program that originally produced the document. That hidden data (metadata) is information describing the history, tracking or management of an electronic document including file designation, create and edit dates, authorship, comments and edit history.

MCCCD is not specifically required to retain the document in an electronic format, but if one is kept, it should probably be in its native format thereby preserving the metadata and that document be released pursuant to a public records request. Only the final version, rather than numerous drafts, of a document needs to be retained.

Responding to a Public Records Request

Generally

A good approach to a public records request is to first identify whether the record(s) requested is indeed a public record and which type of public record it is. For ease in identifying and analyzing your public records, we have provided the three exceptions to public records and the three types of public records. As this is not a clear area of the law, contact the Office of Public Stewardship or the Office of General Counsel when questions arise.

1. Three broad exceptions to public records:

Is your document covered by one of the exceptions to public records?

- a. **Confidentiality:** Disclosure is not required where prohibited by statute, court rule or court order. For example, attorney-client communications; home addresses and telephone numbers; executive session minutes; social security numbers; court orders; etc. There are over 300 Arizona statutes that make certain information confidential. A comprehensive list of these statutes is included in the Arizona Attorney General publication entitled *Arizona Agency Handbook*, which is accessible on the Internet at www.azag.gov or <https://www.azag.gov/agency-handbook>
- b. **Personal privacy:** Some data need not be disclosed due to an individual's privacy rights when that privacy right outweighs the public's right to know. Information is private if it is intended for or restricted to the use of a particular person or group or class of persons, when it is not freely available to the public. The privacy interest encompasses the individual's control of information concerning his/her person. Examples include:
 - Home address, telephone numbers, racial background, age, birth dates, credit or debit card numbers, financial account numbers or credit reports of individuals;
 - Floor plans will not be released without the written permission of the owner and/or design firm in order to protect copyright and personal privacy interests of the occupants/owners. MCCCD may divulge general information concerning the construction, such as total square footage, site plan, and information read from the plans without revealing details of each room, location of private areas, security systems or other personal information.
- c. **"Best interest":** Disclosure may not be required if release of the information is not in the best interest of the public body. Examples include:
 - Release would inhibit public safety;
 - Release would place MCCCD at a competitive disadvantage.

2. The three types of public records requests:

- a. **Must be released:** Most records are "public records" and if none of the three exceptions apply, the records must be released.
- b. **May be released:** Some records do not have to be released because one of the three exceptions applies, but the release of the information is within MCCCD's discretion because release is not prohibited by state or federal law, court rule or court order.
- c. **Must not be released:** Some information cannot be disclosed because its release is prohibited by state or federal law, court rule or court order.

Steps for Responding to Public Records Requests

1. Review the Public Records Policy Manual.
2. Review your department/division records to become familiar with the types of records that may be requested. Develop your own list of commonly requested documents. Meet with the Office of Public Stewardship if necessary to assist you in determining how your records are classified.
3. Ask the person requesting public records to complete the Public Records Request Form and, if a commercial request, have the request notarized. If the requestor indicates the purpose is noncommercial, usually no further inquiry is appropriate. **NOTE:** Though we request public records requests be submitted in writing, the form does not have to be used. Verbal and email requests are also acceptable. *Requests may not be denied because they were not put on the right form.*

4. Distinguish public records request from subpoenas and court orders. Subpoenas and court orders will indicate a court and case name. Refer all subpoenas and court orders to the Office of General Counsel.
5. Identify the documents requested. Do you have access to these documents or do you need to involve another department/division? If a request involves multiple departments and divisions, call the Office of Public Stewardship for assistance.
6. Determine the status of the documents. Are they public records that must be released, may be released, or must not be released? If you are unsure, call the Office of Public Stewardship for assistance.
7. It is possible that only a portion of the document(s) “must” or “may” be released. Should you determine that there is a portion of the document that falls within an exemption, then you still have a duty to disclose the document. However, prior to disclosing the document you must “redact” the information that falls within an exemption. Redaction is simply obscuring the exempted information prior to disclosing the document.
8. Compile the documents and respond promptly. What constitutes “promptly” has not yet been determined by the courts, but MCCCD should respond as soon as practical given the factual circumstances of each case.
9. The right to inspect documents is not unqualified. Records may not be inspected at such times and in such a manner as to disrupt public business. Prior to allowing anyone to inspect any records make sure you review them to determine whether or not any of the documents need to be withheld or partly redacted.
10. Any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours. If copies are requested and the record custodian does not have the facilities for making copies of the public records, the copies may be made while the public records remain in the control of the custodian and subject to the custodian’s supervision. MCCCD is not required to allow the requester to make his own copies.
11. Prior to turning over any documents being requested make sure you collect payment for the requested documents.

What Happens if a Public Records Request Has Been Denied?

1. If a public records request has been improperly denied, the person or entity requesting the record may bring a special action against MCCCD. A person who believes he/she has been improperly denied access to public records may bring a special action against the agency or officer. MCCCD has the burden of proving that release of specific public information should not be allowed.
2. If the court decides that the person was wrongfully denied access, then the court may award damages against MCCCD. This may include the award of legal costs, including attorney’s fees.
3. In the event there is a substantial issue of confidentiality, MCCCD may file a special action against the party requesting the confidential records and request the Superior Court to make an in camera review of the requested material and make a decision as to whether it is a public record subject to disclosure.

How Should I Respond to Custom Requests?

Arizona public records law does not require the MCCCD to:

1. Obtain a new record;
2. Create new report formats;
3. Convert data to different medium or formats;
4. Perform custom programming or extraction; or
5. Perform research projects.
 - a. Custom requests are unique requests that ask a department to create new documents or sort through current documents and create original reports.
 - b. Custom requests can be denied and are not encouraged. Arizona law does not require MCCCD to create documents that do not already exist in order to comply with a public records request. However, a manager may choose to fulfill a custom request for non-existing information or for existing information in a different format or medium when it is in MCCCD’s best interest to do so.

- c. Factors to consider in evaluating whether to fulfill a custom request include the availability of resources (personnel, equipment, etc.), the data subject to disclosure, production costs and maintenance costs.
- d. Custom requests are not favored and an employee must have a justifiable reason why the custom request should be provided. This prevents the arbitrary release of documents to different requestors.
- e. Once a “custom” document is created it then becomes a public record and is subject to the standard public records requests guidelines and must be kept by MCCCDC and/or any department pursuant to the records retention schedule.
- f. MCCCDC may charge any person or entity a fee for custom requests. The amount is to be “reasonable.” The fee may include: reproduction costs, data maintenance costs, cost of services and/or the fair price agreed upon by the parties. A fee may not be charged to search for public documents. Also, departments should keep records for the basis of determining fees. Costs should not be so prohibitive to discourage document requests.

How Does MCCCDC Handle Requests for Personnel Files and Evaluations?

For the review of personnel files, the Governing Board of the Maricopa County Community College District establishes that the following information be disclosed regarding present or former employees:

1. Name
2. Titles or positions (including academic degrees and honors received)
3. Fact of past or present employment
4. Dates of employment
5. Salaries or rates of pay
6. Name of employee’s current or last known supervisor
7. Disciplinary Records
8. Self-Evaluations
9. Performance Reviews

Personnel records that are works in progress or part of the deliberative process are not subject to release. Access to personal records or disclosure of other personnel information may be provided in compelling circumstances affecting the immediate health or safety of the individual and others.

Information that will not be released:

The following information will not be released to the public:

1. Social security, employee or student ID numbers;
2. Birth date;
3. Home address and telephone number;
4. Medical records.

How Does MCCCDC Handle Requests for Email?

1. Emails, including any digitally saved voicemails, may be public records that are subject to release under public records law.
2. Emails generated or received on an MCCCDC computer system purchased with public funds and subject to written policies does not necessarily mean that the emails must be released. Rather, the nature and the purpose of the email must be examined and the value of the information to MCCCDC must be determined. Emails are released if the information in the emails reasonably relates to the activities of an official in furtherance of their duties as an official. Emails of personal affairs are not subject to release.
3. If a broad email request is made, the requester will be asked to narrow his/her request to a specific time frame and a specific topic. If he/she refuses to narrow such a request contact the Office of Public Stewardship or Office of General Counsel for further guidance on how to proceed.
4. Requests made for emails of a specific employee will be processed directly by the Office of Public Stewardship. Messages will be reviewed within the scope of the request and released as requested, following the guidelines noted previously.
5. A department challenging disclosure of a public record bears the burden of overcoming the legal

- presumption favoring disclosure of the record. The department will have to specifically show how the production of the email would violate privacy, confidentiality or MCCCD's best interests.
6. If emails are requested, be sure to inform the employee or elected official and tell them not to delete their emails. Emails not subject to a records request or litigation hold may or may not be deleted periodically. It must be determined whether the email would be considered a public document. Emails that are public records may only be deleted after the expiration of the time period specified in the relevant record's retention policy.

How Should Standing Requests Be Handled?

1. Standing requests are requests for certain records to be disseminated on a scheduled basis.
2. There is no obligation to fulfill these requests. If a standing request is created the appropriate document request forms must still be filled out.
3. Some departments may have standing requests which they honor, but creating new standing requests or keeping outdated standing requests is discouraged.
4. If a standing request is created, include an advisory statement which indicates the department is not making an open ended commitment. Include an exact time schedule for how long the request will be honored. Try to keep the standing request below four months. Also, indicate that the requestor is responsible for renewing the request once it expires.

Email Distribution Lists

1. It is appropriate to release a record through an email.
2. Records release is a formal process; even if done through email, the appropriate forms should still be filled out (or at least documented in some fashion).
3. If a distributions list is created, outside sources should be distinct from internal email contacts. This separation prevents unknowingly releasing confidential or personal information.

Can MCCCD Charge a Fee?

Fees can be charged for most responses to public record requests. However, how the fee is calculated depends upon the type of public records request. The Office of Public Stewardship often releases copies of requests that are less than 10 pages at no charge.

Non-Commercial Public Records Requests

MCCCD can only recover the cost of reproduction by imposing a fee. The fee covers such costs as paper, machinery for reproduction and employee time to do the reproduction. The cost to search for the material cannot be recovered. Standard fees are Paper Copy - \$0.25 per page, Digital Copy - \$0.25 per page, Fax Transmittals - \$1.00 per page, Postage - Actual Costs, USB Flash Drive - \$15.00 (*If records are readily maintained in an electronic format, then both a per page and USB charge shall apply*). Costs for postage may also be assessed. Payment must be received before copies or faxes will be released.

Commercial Public Records Requests

1. This is the use of a public record for the purpose of:
 - a. Sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or
 - b. Obtaining of names and addresses from such public records for the purpose of solicitation or
 - c. For any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of such public record.
2. People who are regularly engaged in gathering, reporting, writing, editing, publishing or broadcasting news to the public are not considered commercial users.
3. The fee for this type of request may include costs for reproduction, searching, data maintenance and the value of the reproduction on the commercial market.
4. Staff will calculate the value of the reproduction on the commercial market at \$200/

thousand (names, courses, sections, etc.) for commercial purposes; \$100 per thousand for noncommercial purposes, and \$75 per hour for programming time all to be paid upon receipt of information. It is understood that information will have a greater value if it is to be resold or utilized by more than one person or agency.

Appeal Process

A person or entity that is denied records pursuant to a public records request may ask the MCCCD to review the denial by asking the person who denied the request to re-evaluate the decision. If that person receives such a request it is to be forwarded to the Office of Public Stewardship so that the General Counsel, Chancellor or other Administrators can consult with one another to determine whether or not the denial was proper.

When (and Who) Should I Call for Help?

Office of General Counsel

1. When the request is made concerning a matter currently in litigation or one that is likely to lead to litigation.
2. When the item requested is a memorandum containing legal advice from the General Counsel or Assistant General Counsel members or from one of MCCCD's outside counsel.

Office of Public Stewardship

1. When the request involves multiple departments, divisions, or MCCCD as a whole.
2. When the request involves producing a draft or work in progress and not the final product.
3. When, after reviewing the handbook and consulting a supervisor, it is still not clear how to respond.

How Should Media Requests Be Handled?

All media requests should be handled through College or District Media Relations.

Records Retention

Most MCCCD records are defined on the existing Higher Education Retention Schedules. Notable exceptions are student records, medical records and other statutorily protected information. A copy of the retention schedules may be requested through the Office of Public Stewardship. Additional information can be found at <https://chancellor.maricopa.edu/public-stewardship/records-information/records-retention-and-disposition-schedules-for>. If it is not clear if a document can be destroyed, contact the Office of Public Stewardship for advice.

Electronic Discovery, Storage and Maintenance

There is a new area of law developing regarding the discoverability of electronic evidence in the litigation arena. Because approximately 90% of documents originate in electronic form, all parties to lawsuits are required to produce electronic evidence. In the instance of litigation, the Office of General Counsel will issue a written “litigation hold” on documents that MCCCD must preserve. That means that certain records may be retained longer than proscribed in the standard retention schedule. The Office of General Counsel may require records on particular employees’ computers, department share drives or back-up tapes be preserved. In those instances, all impacted employees will also be informed not to delete any emails. All employees impacted by such a “litigation hold” will work closely with their supervisor and the Office of General Counsel to ensure compliance. Failure to comply with such a “litigation hold” may impose numerous sanctions, including large financial ones, on MCCCD.

Records and Information Management (RIM) Handbook

For more information about records and information management (which includes the creation, maintenance and disposition of records and information) refer to the *RIM Handbook* on the Office of Public Stewardship web <https://chancellor.maricopa.edu/public-stewardship/records-information>. The *RIM Handbook* provides information and resources about the lifecycle of records, performing a records inventory and disposition (destruction) of records and information among other topics.

For More Information

Questions regarding RIM and Public Records Requests may be directed to:

Teresa Toney, M.P.A., Manager

Office of Public Stewardship (part of the Office of General Counsel)
2411 West 14th Street • Tempe, AZ 85281-6942
(480) 731-8880 • (480) 731-8819 FAX
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Appendices

**Board Resources 6.17**

Requests for Public Records

As a political subdivision of the state of Arizona, the Maricopa County Community College District is subject to applicable laws related to the inspection and production of public records. A public record entails any record, either paper or electronic, made by a public officer (including members of the Governing Board, faculty, staff and administrators) and kept as a memorial of an official transaction.

All official reports and documents that are not exempt from disclosure will be made available for public access for inspection and copying upon a written request that reasonably describes an identifiable record or records. An appropriate fee may be charged for copying records, including a reasonable amount for the cost of equipment and personnel used in producing copies, but not for the cost of searching for records. The Chancellor shall establish administrative regulations that are necessary to outline the appropriate procedures and fees related to the inspection and production of public records.

Requests for documents will receive a response within a reasonable period of time. The Office of General Counsel must review information that is requested by lawfully issued administrative summons or judicial orders, including search warrants or subpoenas.

For the review of personnel files, the Governing Board of the Maricopa County Community College District establishes that the following information be disclosed regarding present or former employees:

1. Name
2. Titles or positions (including academic degrees and honors received)
3. Fact of past or present employment
4. Dates of employment
5. Salaries or rates of pay
6. Name of employee's current or last known supervisor
7. Disciplinary Records
8. Self-Evaluations
9. Performance Reviews

Personnel records that are works in progress or part of the deliberative process are not subject to release. Access to personal records or disclosure of other personnel information may be provided in compelling circumstances affecting the immediate health or safety of the individual and others.

AMENDED February 22, 2011, Motion No. 9781, 9782

AMENDED March 23, 2010, Motion No. 9668

ADOPTED October 28, 2003, Motion No. 9204



[MCCCD Administrative Regulation 4.15](#)

Retrieval, Disclosure and Retention of Records

Introduction

The Maricopa County Community College District (MCCCD) is subject to the State's broad public records law, obligating it to produce records under a public records request and to retain those records in a consistent manner throughout MCCCD.

That same expectation of consistency in public records production, retention and disposal applies to records that are requested through a subpoena, warrant, judicial or administrative order, litigation discovery document or as part of an MCCCD grievance, investigation or review. So, while MCCCD is composed of 10 colleges, two skill centers, several centers and the District Office, its ability to retrieve, disclose and retain public records must be subject to a single set of standards and one process.

Centralized Authority

Under this administrative regulation, the authority to manage MCCCD public records is centralized in the Manager of the Office of Public Stewardship (Manager). This authority extends to responding to or overseeing the response to public records requests in compliance with State law and establishing standards for the retention, retrieval, disclosure and disposal of public records.

The authority also extends to having access to the electronic records of an MCCCD employee or a Governing Board member under the procedures and narrow circumstances specified in this regulation. Under those circumstances and procedures, the Manager and the Vice Chancellor of Information Technology or his designee/supervisee are authorized to access those electronic records using third-party technology tools that MCCCD has purchased. The Vice Chancellor may, after conferring with the Manager and General Counsel, authorize access on a case-by-case basis to a non-District Office information technology employee on the request of the College President who supervises that employee justifying the need for access, the scope of the access, and the duration that access is needed.

Public Records Generally

Under Arizona's public records law, MCCCD must make records in its custody open for public inspection by any person, and to provide any person with copies on request. That mandate includes records that reside in electronic form. MCCCD also must preserve those records according to the standardized retention and disposition schedules approved by the Arizona State Library, Archives and Public Records applicable to Arizona Community Colleges and Districts (Retention Schedule). See Arizona Revised Statutes §§39-121 et seq.

MCCCD employees and Governing Board members should presume that all work-related records that they produce during work hours as well as communications and attachments sent or received electronically in the performance of duties relating to MCCCD (whether through an MCCCD technology resource or other technology resource) are public records. The MCCCD General Counsel and the Manager will make the final determination of whether something is a public record or not under the law.

Individual Employees' and Governing Board Members' Responsibility to Comply

Arizona State Library, Archives and Public Records places the responsibility to manage public records in compliance with the law on the individual MCCCD employee or Governing Board member. It does not matter whether the record is in paper or electronic form. The responsibility is the same—on the individual.

Where a record is only in electronic form and resides within MCCCD's technology resources, an electronic record that an employee deletes may still be retained through the normal operation of those resources. However, the law as interpreted by the Arizona State Library, Archives and

Public Records does not place primary responsibility for retention of those records on MCCCD technology resources. The primary responsibility for managing each individual employee's or Governing Board member's electronic records is squarely on that employee or member. The Arizona State Library, Archives and Public Records has made that clear despite potential practical barriers to easy compliance, such as a limitations on memory within an MCCCD employee's computer.

Note that it is a violation of MCCCD's Administrative Regulation 4.4, "Technology Resource Standards," for an employee to delete or alter an electronic public record in violation of public records retention requirements, or in anticipation of receiving or after receipt of a public records request, subpoena, a request for records as part of an MCCCD grievance, investigation or review, or other lawful request for the record.

The standards for retaining and disposing of records are discussed in more detail under the next section of this regulation.

Understanding and Applying Record Retention and Disposal Standards

The official Retention Schedule is available at: [Arizona State Library, Archives and Public Records](#)

The [Arizona State Library, Archives and Public Records'](#) "rule of thumb" places public records into four categories based on their content: administrative, legal, fiscal research, or historical. Records of historical value must be retained permanently. For records in the other three categories, the length of time that the record must be maintained and then disposed of varies. Additionally, the description of the types of records in the Retention Schedule is by general subject matter (such as "EEO/Affirmative Action" or "Fiscal/Business Operations"), and not by the descriptor "administrative," "legal" or "fiscal research." A single record may have content that places it under more than one category with differing retention requirements. In those cases, the employee or Governing Board member should keep it for the longest duration specified in the Retention Schedule.

The Retention Schedule requires public employees and officers to maintain electronic records in their original form. A paper copy of the electronic record does not comply with the standards in the Retention Schedule. All public employees and governing board members, including those for MCCCD, have an obligation to retain electronic records even when they are leaving public employment or as a member of a public governing board.

Information is available on MCCCD's Public Records website to assist employees and Governing Board members in making retention determinations. See <https://chancellor.maricopa.edu/public-stewardship/records-information/records-retention-and-disposition-schedules-for>. If an employee or Governing Board member has questions about the time period for which a record should be retained, he or she may contact the Manager for assistance.

The policy of Maricopa is to use its best efforts to comply with the Retention Schedule in a consistent and systematic manner. Compliance requires cooperation and diligence, particularly when it comes to retention of electronic records. The daily volume of electronic records produced, the speed in which they are created and sent, and the storage limitations on MCCCD servers make adhering to the Retention Schedule complicated.

For electronic records, this administrative regulation recommends a general retention/disposal standard for employees and Governing Board members of one year from the creation or receipt of the record. During that time, the employee or Governing Board member is encouraged to review the Retention Schedule to determine if a shorter or longer period of time is required. If the employee or Governing Board member believes that retention beyond a year is required, he or she may forward the electronic record to the following website: [URL to be inserted].

Finally, MCCCD employees and Governing Board members are reminded not to retain records beyond the period of time that the Retention Schedule requires.

District Office and College Records Officers

To implement the standards specified in this administrative regulation, each College President shall appoint a Records Officer from among the College's Vice Presidents to coordinate public records requests, subpoenas, warrants, judicial or administrative orders, litigation discovery documents, or records as part of a grievance, investigation or review (collectively, "requests") with the Manager. The Records Officer shall notify the Manager of records requests made directly to the College and be responsible for preparing a response plan for records residing at the College. The plan should include determining the possible location of the records, College staff to assist with the search and retrieval of the records, the scope of the search, the need for search confidentiality and a projected completion date for the search. For records requests that are initiated through the Manager's office or that seek records at more than one College, the Records Officer shall develop the plan with the Manager. The Manager shall serve as the Records Officer for the District Office.

The Manager will maintain a list of records requests. Either the Manager or the Records Officer shall, to the extent practicable, keep a copy of the entire set of records produced pursuant to a request.

MCCCD employees or Governing Board members who seek access to MCCCD public records for reasons other than MCCCD business shall be required to submit a public records request as though they are an outside party.

Timeliness of Request Response

Arizona's Public Records Law states that "[t]he custodian of [public] records shall promptly furnish such copies. . ." See Arizona Revised Statutes §39-121.01-D-1. The Records Officer and, where applicable, the Manager shall be responsible for determining a reasonable date by which the search and copying of documents should be complete, based on criteria such as the size and scope of the request and the availability of staff to conduct those activities. However, it is the policy of MCCCD to proceed with due diligence to accommodate requests as quickly as circumstances permit and, in the case of public records requests, subpoenas, warrants and discovery documents, to comply with the time standards specified in the law, by law enforcement, by judicial order, or by rules of court. An MCCCD employee or Governing Board member who believes that a timeline established by the Records Officer and the Manager is unreasonable shall immediately advise them in writing of the reasons and recommend an alternative plan for review by the Records Officer and the Manager.

Record Holds

The Chancellor, Manager or General Counsel may direct that some or all MCCCD employees and Governing Board members place a hold on deleting records relating to particular subjects or issues. Once the Chancellor issues that directive, employees and Governing Board members are prohibited from deleting or altering the records that are subject to the hold until the Chancellor, Manager or General Counsel advises that the hold is lifted. Situations in which holds are likely to occur include but are not limited to litigation involving MCCCD and law enforcement investigations.

Access to Electronic Records

Investigative Access. There are circumstances under which the General Counsel, the Manager or a College President needs to have access to an employee's e-mail communications or other electronic records without advising the employee. Those situations generally occur when: MCCCD is served with a subpoena, a warrant, or judicial order that requires confidentiality; confidentiality is directed by a law enforcement agency; or the employee is subject of an MCCCD grievance, investigation or review that the Manager determines, after initial review, requires access.

If a College President believes that he or she needs access to an employee's e-mail communications or other electronic records, the President shall discuss the matter with the

Manager. Only the Manager may request, and only the General Counsel or an Assistant General Counsel acting in the General Counsel's absence may authorize, access to an employee's e-mail and electronic records for investigative purposes. Authorization shall be in writing and define the scope of the access required to conduct the review. As specified in the section of this administrative regulation entitled "[Standard for Search Capabilities Regarding Electronic Records](#)," each College's e-mail system shall authorize the Manager and the Vice Chancellor of Information Technology or his or her designee/supervisee to have direct access to conduct a search without the need to rely on the information technology staff of the College. The standards for search capabilities shall apply regardless of the centralized ability of the Manager and the Vice Chancellor to conduct a search as described in the section under this administrative regulation entitled "[Centralized Authority](#)."

If the requirement for confidentiality is removed, the Manager may but is not obligated to advise the employee that his or her e-mails or other electronic records were accessed. An employee who believes that his or her e-mail or electronic records were illegally accessed shall notify the General Counsel in writing of the reasons. The General Counsel's determination regarding the legality of access shall be conclusive.

Operational Access. There may be operational circumstances that require access to an MCCC employee's electronic records in the absence of the employee, such as when the employee is on vacation or ill. Like paper documents on an employee's desk or files, electronic records belong to MCCC and need to be available for business purposes. In those instances, the College President or the Chancellor shall complete the form available at [Appendix AS-13](#) and submit it for approval to the Vice Chancellor for Information Technology or his or her designee for approval. The College President shall provide a copy of the approved form to the employee whose electronic records were accessed.

Access to Former Employees' Records. All records should be maintained according to value and the respective retention schedule. An employee who resigns or retires from his or her position at MCCC shall contact his/her direct supervisor about preserving his or her electronic records before his or her departure. Those records shall be transferred to a storage device and provided to the supervisor.

Standard for Search Capabilities Regarding Electronic Records

All electronic records systems serving Maricopa shall be capable of doing the following, which are minimum standards for access:

- Automated archival process for messages and documents sent and received with the capability of implementing different archiving standards by type of record as specified in the retention and disposition schedules approved by the Arizona State Library, Archives and Public Records
- Destruction according to that same retention schedule (life cycle of item per schedule)
- Capability to search for words or terms within headers and message or document text,
- Assurance that messages and other records cannot be changed or deleted (message integrity)
- Access to the Manager and the District Office's Information Technology Department to search, retrieve and delete under the circumstances specified in this administrative regulation
- Audit to determine who logs in, searches, retrieves, deletes
- Capacity, longevity, security, recovery
- Ability of MCCC to maintain ownership of the records
- Ability to place holds on records subject to a request
- Pull records within a reasonable period of time after the initiation of the search command
- Restore records in their original format and to the individual level, with restoration occurring _____ minutes of the initiation of the restore command
- Preservation of past records and well as new ones when switching to a different communications system
- The Chancellor or the Chancellor's designee shall have the authority to approve an electronic records system that does not have one or several of the capabilities specified above when the unique needs of a Maricopa entity require use of that system, and safeguards are in

place to assure that use of the system will permit the recording and retrieval of records as required by law.

Requests for Copies

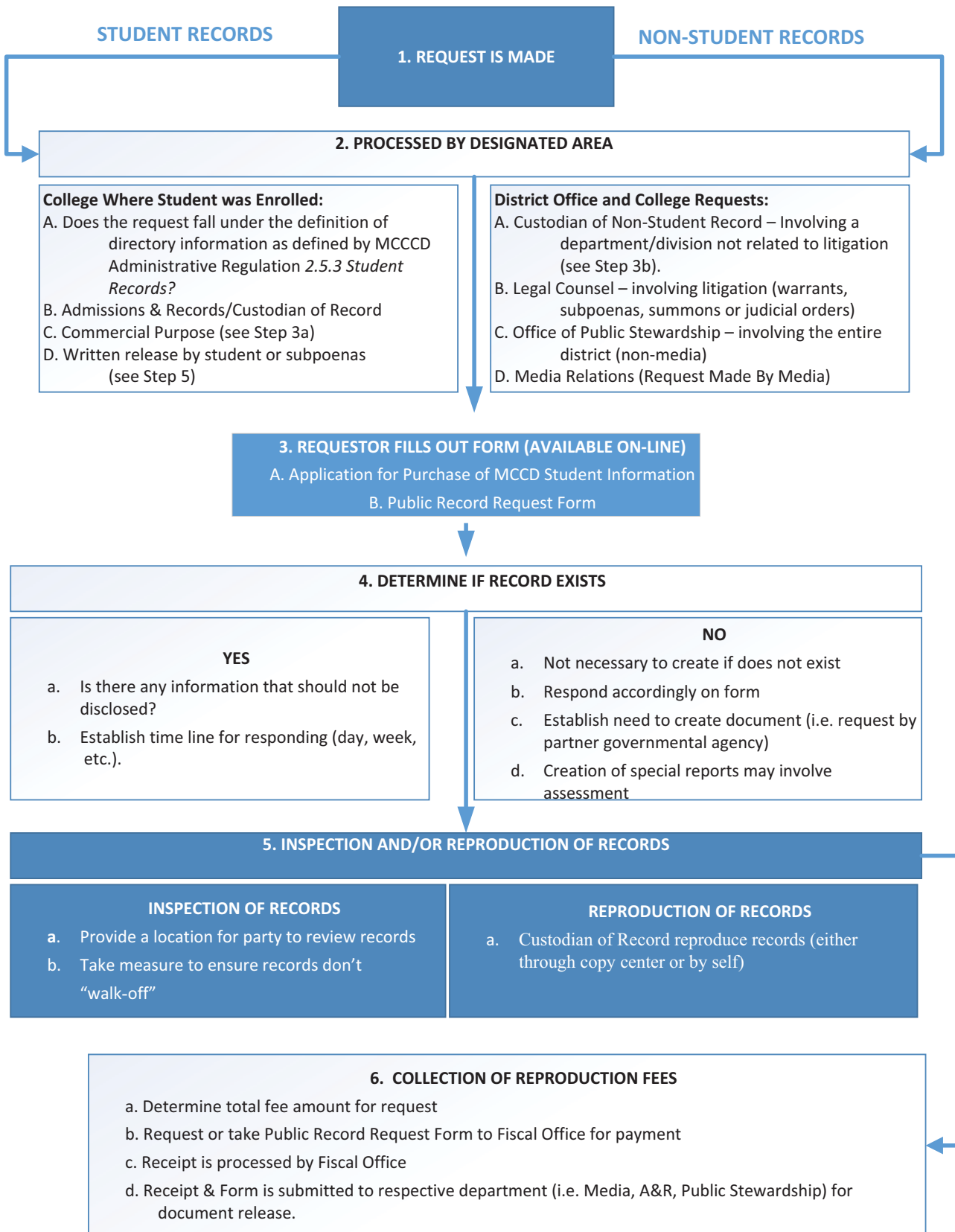
A Maricopa employee may request that electronic communications created by him or her or written directly to him or her be restored from backup in the case of a hardware or system failure where the electronic record has passed through the District Office's server. All such requests must be reviewed and authorized by the General Counsel.

After review and authorization by the General Counsel, requests for copies of electronic communications will be forwarded to ITS security services. ITS security services will comply with the request and coordinate retrieval of the information within seven business days.

[AMENDED through the Administrative Regulation approval process, June 27, 2011](#)

[ADOPTED through the Administrative Regulation approval process, February 24, 2004](#)

Process for Responding to Requests



**Process for Responding to Vendors
(Copies of Contracts, RFPs, Bid, Pricing, and Scoring Results)**

1. REQUEST IS MADE

2. PROCESSED BY DISTRICT OFFICE OF PUBLIC STEWARDSHIP

3. DISTRICT OFFICE OF PUBLIC STEWARDSHIP CONTACTS DISTRICT PURCHASING. BUYER DETERMINES IF BID PROCESS IS COMPLETE PRIOR TO VIEWING RECORDS.

4. IF REQUEST IS TO REVIEW RECORDS

- A. Records are reviewed at District Office.
- B. Take measures to ensure that records don't "Walk off"

5. IF REQUEST IS TO REPRODUCE RECORDS

- A. Public Record Request Form is Filled Out
- B. Buyer has records reproduced and submits them to District Office of Public Stewardship.
- C. Determination of total fee amount for request.

6. COLLECTION OF REPRODUCTION FEES

- A. Determine total fee amount for request
- B. Public Record Request Form is taken to Fiscal Office for payment
- C. Receipt processed by Fiscal Office
- D. Documents and a copy of the Receipt are released to requestor.

Public Record Request Form can be
found at

<https://chancellor.maricopa.edu/public-stewardship/records-information/public-records>



Office of Admissions & Records

- CGCC EMCC GCC GWCC MCC PC
 PVCC RSCC SCC SMCC MSC

Application for Purchaser of MCCD Student Information

Organization (Requestor):	Date:
Address:	
City, State, Zip:	
Name of Responsible Individual:	Title:
Telephone Number:	E-Mail Address:
Description of information requested:	
Need by (date):	
Is this request for commercial purposes? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Copy of material(s) to be sent to student must be attached. Requests submitted without attachments will be returned.	
Purpose of request and planned use of student information (attach additional pages if needed)	

Application for Purchaser of Student Information (page 2)

Policy/Conditions

- All applicant/student information will be handled in accordance with requirements of appropriate rules, regulations, and legislations (e.g. the family Educational Rights and Privacy Act of 1974, also known as the Buckley Amendment; the Solomon Amendment of 1997, Arizona Open Records Act; ect.)
- The affected MCCD College will charge the requestor a fee for the information. The fee will include the portion of the cost to the state for obtaining the original...ARS 39-121.03. A fee will be assessed as allowed by law: \$200 per thousand names for commercial purposes, \$100 per thousand names for noncommercial purposes, and \$75 per hour for programming time all to be paid upon receipt of information.
- Requestor agrees not to sell, distribute, transfer, give or provide in any manner whatsoever the list to any other party or to a secondary market.
- Requestor agrees that all solicitation materials forwarded to prospective, current, or former MCCD college students will be truthful and accurate.
- Requestor has attached the brochure or other solicitation materials that will be sent to prospective, current, or former students within the written request for the information.
- Requestor agrees not to present to any prospective, current or former students of the MCCD College that the requestor is owned, operated, controlled by, related to, or affiliated with the affected MCCD College and/or the State Community College Board in any manner.
- Requestor agrees that its sole purpose in requesting the information is as stated in the written request to the designated individual at the affected MCCD college.
- While requests for public records are processed as soon as reasonably possible it is likely that MCCD College will provide the information to the requestor no sooner than (10) working days after receipt of written request and attachments form the requestor.
- Requestor will be responsible for pick up or delivery of the information from the Office of Admissions & Records.
- Submit request for student information to the Office of Admissions & Records at the college listed on the reverse side of this form.
- Questions should be directed to the Office of Admissions & Records at the specified MCCD College.

I have read and agree to all of the above policy/conditions statements.

Requestor's Authorized Signature

Date

Notary's verification is required only for commercial purposes.

Before me this _____ day of _____, year _____, personally appeared _____

SUBSCRIBED AND SWORN to before me this _____ day of _____ year _____.

Notary's Signature

My commission expires: _____

For College Use:

Approved

Not Approved

Rational: _____

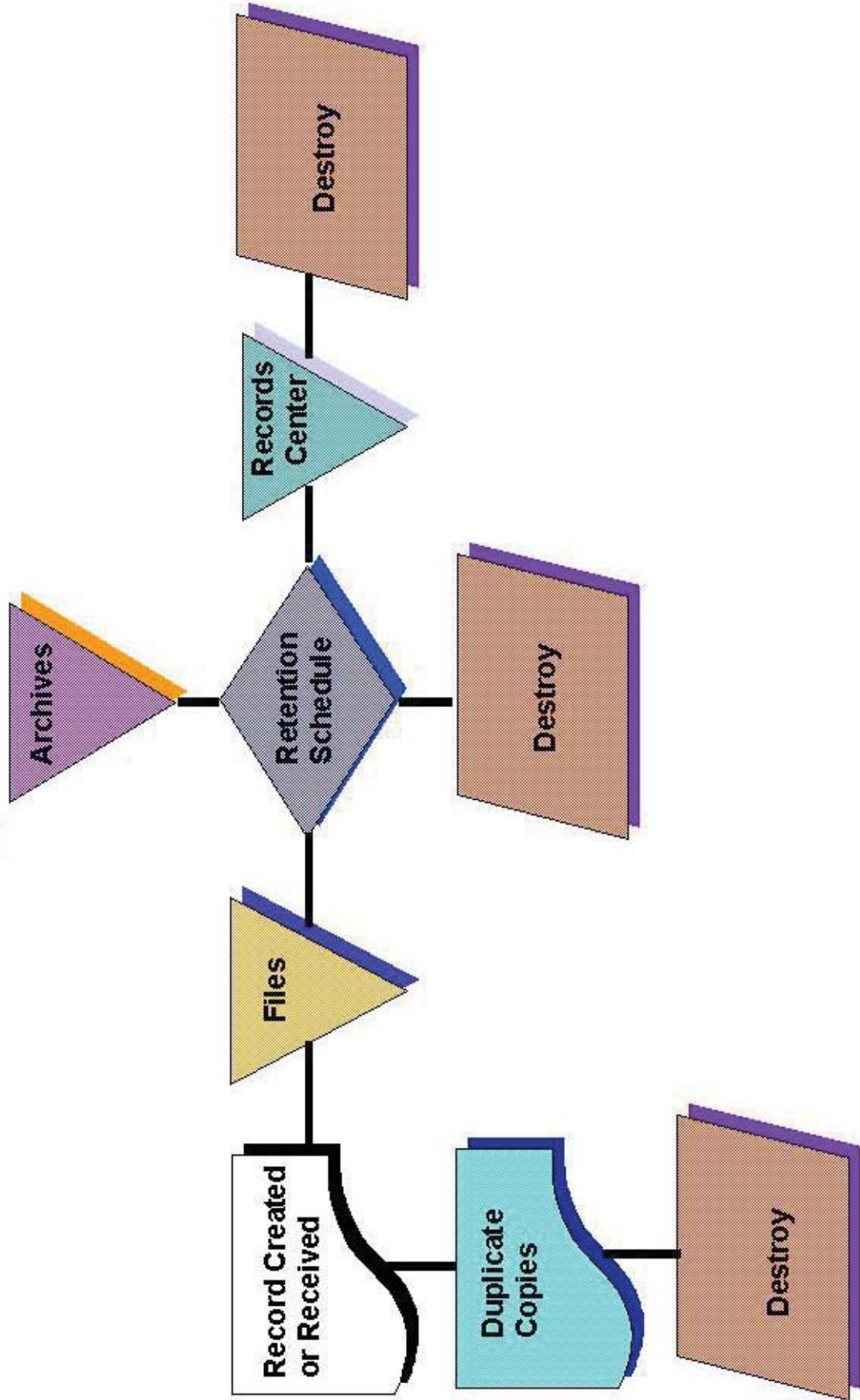
Comments: _____

College's Authorized Signature

Date

Total Charge: _____ Account Code: _____

The Life-cycle of Records



Is It A Record?

