

# 2018 MARE/MO K-8 Fall Conference

## **Search & Seizure and Effectively Partnering with Law Enforcement**

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# The Fourth Amendment



**The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.**

# SEARCH AND SEIZURE IN THE SCHOOL SETTING



The ***Fourth Amendment*** of the U.S. Constitution governs student searches and seizures of property. Under the supreme court's guidelines found in ***New Jersey v. T.L.O.***, 469 U.S. 325 (1985), the law does not prohibit all student searches, but only requires them to be ***reasonable***.





# BALANCING ACT

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Students'  
Legitimate  
Expectation  
of Privacy

VS

District's  
Substantial  
Interest in  
Maintaining  
Discipline in  
the School



# LEGAL STANDARD FOR SCHOOL SEARCH

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- Reasonable Suspicion
  - Lower than probable cause
- Must be justified at its inception
- Scope of search appropriate when measures used are reasonably related to objective of search
  - Consider age and sex of student and nature of infraction





# WHAT IS A SEARCH?

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- A school official's actions amount to a search when he or she is attempting to gain access to any item that is shielded from public view or located in a protected place or thing.
- **YES**
  - Examination of private items that are not open or exposed to public view
  - Physical examination or pat down of student's body or clothing
  - Opening or inspecting personal possessions
  - Handling or feeling closed or opaque containers
  - Using extraordinary means to enhance view or sound in **closed**, private areas
- **NO**
  - Observation of an object in plain view as long as the official has a right to be there
  - Examination of an object when the student denies ownership
  - Examination of an abandoned item
  - Detection of something exposed to the senses (sight, smell, not touch)
  - Using extraordinary means to enhance view or sound in **open** areas



# DOES THE SEARCH SATISFY AN EXCEPTION?

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- Although a school official's conduct may have the qualities of a search, there are some circumstances that constitute an exception to 4th amendment limits.
  - **Voluntarily Abandonment**
  - **Emergency**
  - **Consent**



# DOES THE SEARCH SATISFY AN EXCEPTION (CONT...)

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- **Voluntarily Abandonment:** A student may voluntarily relinquish expectations of privacy when he or she does one or more of the following:
  - Disclaims ownership
  - Disassociates self with item
  - Intentionally leaves or hides item in a public place
  - Throws away or otherwise disposes of the item when approached by school official



# NEXT ON COPS

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- **United States of America v. Crumble, (8th Cir., 16-4308, 01/02/18)**
  - Call to police reporting shots fired
  - Police arrive at the scene and find a crashed vehicle with bullet holes and the back window shot out
  - Keys in the ignition, gun on the floor board, and a cell phone in the seat
  - Mr. Crumble denied any knowledge of the shooting or any involvement
- **How did the court rule?**
- **Why do we care?**



# DOES THE SEARCH SATISFY AN EXCEPTION? (CONT. . .)

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- **Emergency:** A school official may immediately provide *necessary aid to a student to protect or preserve life or avoid injury* without regard to whether the conduct constitutes a search. The following are some examples of the emergency exception.
  - Incapacitated or injured student
  - Smoke, flames or toxic fumes
  - Gunfire, explosions
  - Cries for help
  - Assault
  - Any true existing emergency



# DOES THE SEARCH SATISFY AN EXCEPTION? (CONT. . .)

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- **Consent:** A student consents to a search when *all* of the following elements are met:
  - The student can withdraw consent at any time
  - The student has the authority to consent (a student cannot give consent to search another student's property)
  - Consent is voluntarily and not coerced in any manner



# WHAT ARE WE LOOKING FOR?

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- Reasonable suspicion that a law or rule has been violated.





# **VIOLATION:**

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- **What rule/board policy do you believe has been violated?**



- Why do you believe it has been violated?
- Identify specific facts.



# POSSIBLE SOURCES OF KNOWLEDGE

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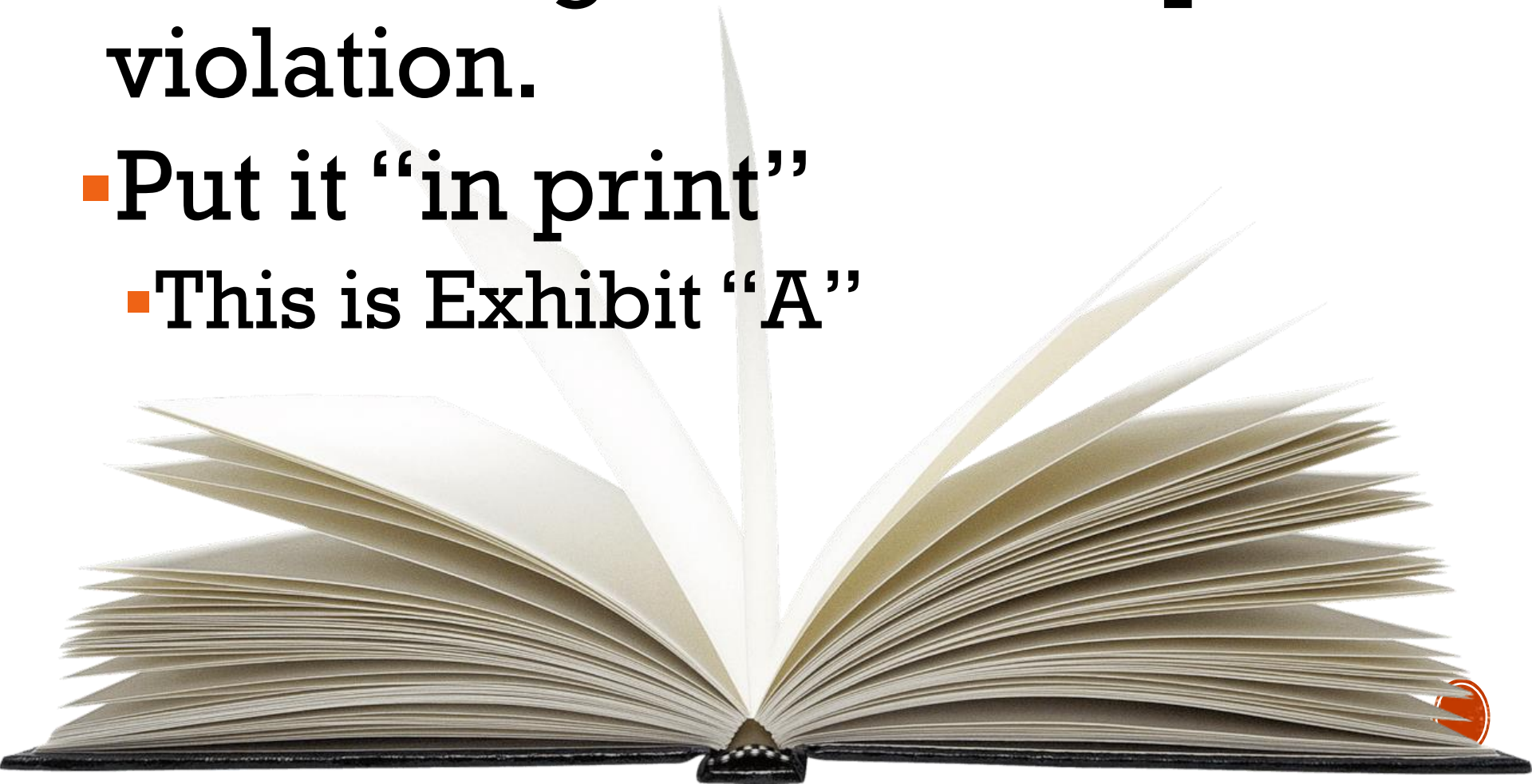
- Employee's personal observations and knowledge of the student
- Reports of other school officials
- Reports of witnesses and/or victims
- Other reports
  - Informants
  - Other students
  - Parents



# SCOPE:

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- Limit in light of the suspected violation.
- Put it “in print”
  - This is Exhibit “A”



# STUDENT SEARCHES

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Search of a student by a teacher or school official must be reasonable:

- There must be reasonable grounds for suspecting that a search will turn up evidence that the student has violated or is violating either the law or the rules of the school.
  - Look at the source of information and be realistic!!



# STUDENT SEARCHES

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A search is justified when a *reasonable suspicion* that the search will reveal evidence of a crime or rule violation exists. Although a probable cause is not required, school officials must have facts sufficient to establish a probability that their suspicion is true.

- **MAKE SURE YOUR SUSPICION IS REASONABLE**

- A belief exists that a crime or school rule violation has been committed.
- A belief exists that a particular student has committed the crime or violation.
- Physical evidence of the violation is likely to exist.
- Physical evidence would likely be found in a particular place associated with the student suspected of the violation.



# STUDENT SEARCHES

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- **EXAMPLES:**
- **Does your situation fall into the factors that are generally sufficient to meet the requirements of reasonable suspicion?**
  - A crime or school violation is observed in progress
  - A weapon is observed on a student
  - Others have reported the student has a weapon
  - Student has been seen in possession of illegal, unsafe or stolen items
  - The smell of burning tobacco or alcohol is detected
  - Student appears to be under the influence of drugs
  - Student admits commission of crime or violation





# STUDENT SEARCHES

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- **EXAMPLES: (cont.)**
- **Does your situation fall into the factors that are generally insufficient to meet the requirements of reasonable suspicion?**
  - Student flees from vicinity or recent crime or violation
  - Student flees from approaching school official
  - Student becomes nervous or anxious when approached by official
  - Imprecise information has been provided by informant
  - Student's history of similar conduct
  - Report of stolen item is made



# STUDENT SEARCHES

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Search of a student by a teacher or school official must be reasonable (cont.):

- The measures adopted must be reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.



# STUDENT SEARCHES

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- Search of a student by a teacher or school official must be reasonable (cont.):
  - Examine the ***level of personal intrusion***. Is there evidence of the alleged misconduct that is sufficiently convincing to justify this level of intrusion?
  - Ensure the use of ***least intrusive available means*** (dogs, locker searches, metal detectors). Identify available means and basis for choosing that which will be used.
- Body Searches
  - Should be limited to ***emptying pockets, lifting pant legs and removal of coats or other outer wear***.
  - Policy JFG/2150: ***Strip searches*** generally should not be conducted.
  - The exception to strip searches would be if ***a school administrator reasonably believes that a student possesses a weapon, explosive, or substance that poses an imminent threat of physical harm to himself or herself or another person AND if a commissioned law enforcement officer is not immediately available***.
  - Strip searches may be conducted by, or under the authority of, a commissioned law enforcement officer.



# PRACTICAL TIPS — SEARCH PROCEDURE

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- Remove the student to a private area.
- Always watch the student's hands.
- Always have a witness.
- Searcher and witness should be of the same gender as student.
- Searches should be conducted discreetly and privately.
- Allow the student the opportunity to surrender the item or consent to the search.
- If searching the student physically, allow the student to empty his or her pockets and remove outerwear.



# **PRACTICAL TIPS — SEARCH PROCEDURE**

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- **Seize only items that are illegal or are evidence of a crime or rule violation.**
- **Place each item in a separate, sealed envelope and mark it with inventory information including the date, time, source and officials involved in search.**
- **Place item in safe, restricted storage area**
- **Provide illegal items to law enforcement authorities.**
- **Weapons should generally be handled by law enforcement authorities.**



# GOOD SEARCHES

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- Caught smoking
- Smelled marijuana and prior possession
- Drugs found in package on floor
- Markers used to vandalize classroom
- Searched purse for cigarettes
- Search backpack
- Search messages after consent or personal observation of violation of board policy
- Search student with reasonable suspicion



# BAD SEARCHES

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- Confiscated phone – accessed phone numbers and text messages
- All students place belongings on desk and leave room
- Strip search for ibuprofen pill
- Speech slurred – search wallet
- Drug dog sniffed car – strip search to underwear in parking lot
- Students with personal animus report drug possession – strip search







**TIP**



- **Level of intrusiveness should match the seriousness of the infraction**
- **Plain View Doctrine**



# OTHER TYPES OF SEARCHES



# DATELINE: COLUMBIA, MO

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“At this Missouri high school, every kid going to prom must take a Breathalyzer test”



# RANDOM STUDENT DRUG TESTING

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- Random, suspicionless drug testing of students have been upheld where:
  - Testing is of students involved in competitive extracurricular activities or tied to other voluntary activities
  - Testing is not overly invasive (urinalysis or breath)
  - Results are not turned over to law enforcement



# RANDOM STUDENT DRUG TESTING

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- Three factor balancing test:
  - The nature of the privacy interest allegedly compromised;
  - The character of the intrusion complained of;
  - The nature and immediacy of the school district's concerns and the efficacy of the policy in meeting those concerns.  
(Substantial evidence of a major health or safety risk. Such risk should be well documented.)



# DRUG DETECTION DOG SEARCHES

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- Most courts have ruled the use of dogs to sniff students' persons is unconstitutional as an unreasonable search
- However, the use of dogs to sniff students' belongings and school property is generally acceptable and not considered a “search”



# DRUG DETECTION DOG SEARCHES (CONT.)

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## ■ Pros

- Assist in prevention of drug use and possession at school
- Significant deterrent effect
- Effective and accurate way to identify drugs in school

## ■ Cons

- Extremely disruptive
- Create uncomfortable atmosphere when students are forced to stand by while search occurs
- Causes students to be distrustful of school staff





# DRUG DETECTION DOGS (CON'T)

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- **Practical Considerations**
  - Communicate with students and parents about policy regarding canine sweeps
  - Keep dogs away from students
  - Establish and follow protocols
    - Attempt to get student consent for search if possible
    - Protect student's privacy as much as possible
    - Document all decisions and action in the event search is challenged



# SCHOOL LOCKERS

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- No reasonable expectation of privacy in school lockers when school has published notice that lockers are under the ownership and control of the school.
- Good Practice – State in student handbook that lockers are subject to search at any time.



# STUDENT VEHICLES

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- Reasonable suspicion standard.
- Include statement in parking application that vehicles are subject to search.
- Remember “Plain View” doctrine.



# SEARCHES BY SRO

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- A law enforcement officer must have probable cause to search
  - Higher standard than “reasonable suspicion”
- If searching due to violation of school rules, reasonable suspicion standard may apply.
- Real risk if investigating a criminal matter.



# BOARD POLICY

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- JFG
- PF2150



# **BOARD POLICY JFG/2150**

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- **Adult witness**
- **Not in front of other students**
- **Law enforcement – drugs, weapons, stolen goods or evidence of crime and student refuses to surrender items**
- **Law enforcement – student refuses to cooperate**



# BOARD POLICY JFG

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- School employees shall not strip search students
- Contact law enforcement
- Notify parents
- Employees may require students to remove exterior clothing if reasonable as long as underwear not exposed as a result





# PARTNERING WITH LAW ENFORCEMENT



# WHAT EXACTLY ARE WE TALKING ABOUT?

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- Violations of the law, abuse, or neglect – information that must be mandatorily reported

VS

- Information that is either a student/educational record



# THE “NO-BRAINERS”

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- **Missouri Statute 167.117 – must report violations on school grounds or transport:**
  - Act, which if committed by an adult, would be assault in the 1<sup>st</sup> degree assault in the 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup>, degree, sexual assault, or deviate sexual assault (unless there is an agreement regarding reports of 3<sup>rd</sup> degree assault)
  - Drugs/weapons
- **Reports of abuse/neglect under the Mandatory Reporting Statute (210.115)**
- **Violations listed in Missouri Statute 167.115 (Safe Schools Act)**



# MORE DIFFICULT CALLS

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# RECORDS REQUEST RECEIVED...

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- Let's start with some basic questions, inspector.
  - What kind of information do we have?
  - Who created it?
  - Why was it created?
  - Where is the record maintained?
  - Does a records exception apply?



# POLICY CONSIDERATIONS

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- Policies 1410 and KNAJ – Relations with Law Enforcement Authorities
- Policies 1510, 2400, 2410, 6531, and JO-1 – Student and Educational Records
- Policy KKB – recordings as student records



# LAW ENFORCEMENT RECORDS

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- FERPA: records created by law enforcement units for a law enforcement purpose and are maintained by the law enforcement unit and not the school, are not considered education records under FERPA
- May be disclosed without parental permission (juvenile office, police)
- Disclosure to CD and law enforcement if: the disclosure concerns law enforcement's or juvenile justice authorities' ability to effectively serve, prior to adjudication, the student whose records are released
- Subpoenas (try to provide notice)
- Health or safety emergency





# WHAT DOES IT MEAN TO CLASSIFY VIDEO AS A STUDENT RECORD?

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- What exactly does FERPA do?
  - Allows access to records in some instances and denies access to records in other instances (prohibits a school from disclosing personally identifiable information from students' education records without the consent of a parent or eligible student, unless an exception to FERPA's general consent rule applies.)
- How do we know what it does?
  - Depends on who is requesting, and
  - What they request



# WHAT DOES IT MEAN TO CLASSIFY VIDEO AS A STUDENT OR EDUCATION RECORD?

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- Definition: The term “education records” is defined as those records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution, or by a party acting for the agency or institution.
- How does this apply to video footage?
- What if it did not apply?
- Access, not a copy!!





# PARENT OR STUDENT REQUESTS TO VIEW VIDEO

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- Two schools of thought...



- **Try to be consistent!!!**



# FPCO GUIDANCE...WAIT FOR IT

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# PENALTIES

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# HOW DOES THE SUNSHINE LAW FIGURE INTO THIS EQUATION?

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- #6 Scholastic probation, expulsion, or graduation of identifiable individuals, including records of individual test or examination scores; however, personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years;
- #14 Records which are protected from disclosure by law;



# OPTIONS WHEN DISCLOSING

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- CYA letter directed to the receiving entity
  - Limit scope and purpose of disclosure
  - Reiterate nature of record and protections applicable



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