

Access Services
Public Records Act Guidelines
September 7, 2011

access

I. DEFINITIONS

- A. "Agency" means Access Services or any employee authorized to act on its behalf.
- B. "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.
- C. "Public Record" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by the Agency, regardless of physical form or characteristics.
- D. "Writing" means handwriting, typewriting, printing, photostatting, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or a combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.
- E. "Data" means information disclosing the actual quantity of material used to produce an article having commercial value, as well as information disclosing the actual quantity produced.

II. PURPOSE

The purpose of these Guidelines is to implement the California Public Records Act, commencing at Section 6250 of the Government Code, and other applicable statutes and case law, by setting forth the procedures to be followed when making records available to the public. It is the policy of this Agency that public records are open to inspection at all times during the Agency's office hours. Any reasonably segregable portion of a record shall be made available for inspection after deletion of the portions that are exempted by law. It is also the policy of this Agency that except for public records exempt from disclosure by express provisions of law, a request for a copy of reasonably-described identifiable records shall be made available with minimal delay to the requesting party. An exact copy shall be provided unless impracticable to do so.

III. EXAMPLES OF RECORDS AVAILABLE TO THE PUBLIC

- A. Agendas and Minutes of Open Session Board and Committee meetings;
- B. Board Box Items;

C. Published statistical abstracts.

IV. RECORDS NOT AVAILABLE TO THE PUBLIC

A. Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the Agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure. [Gov. Code Sec. 6254(a)].

B. Records pertaining to pending litigation to which the Agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, until the pending litigation or claim have been finally adjudicated or otherwise settled. [Gov. Code Sec. 6254(b)].

C. Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy. [Gov. Code Sec. 6254(c)].

D. Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege. [Gov. Code Sec. 6254(k)].

E. Confidential communications between the Agency and its attorneys. [Ev. Code Sec. 954].

F. Records of documents covered by the attorney work product privilege, or any other judicially recognized privilege, including but not limited to, the deliberative process privilege.

G. Records which relate to Grand Jury testimony.

H. Documents which are privileged under Section 1040 of the Evidence Code which provides:

(a) As used in this section, 'official information' means information acquired in confidence by a public employee in the course of his duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made;

(b) A public entity has a privilege to refuse to disclose information, and to prevent another from disclosing such information, if the privilege is claimed by a person authorized by the public entity to do so; and:

- 1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state; or
- 2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that

outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered."

- I. Trade secrets, which may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it. [Gov. Code Sec. 6254.7(d)].
- J. Computer software, which includes computer mapping systems, computer programs, and computer graphics systems, developed by a state or local agency including the Agency. [Gov. Code Sec. 6254.9(a) and (b)].
- K. Records in which the Agency determines that on the facts, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record. [Gov. Code Sec. 6255]. The cost and burden to the Agency are relevant factors in determining the public interest in not making the record public.
- L. A memorandum submitted to a state body or the Agency's Governing Board by its legal counsel pursuant to subdivision (q) of Government Code Section 11126 or 54956.9 until the pending litigation has been fully adjudicated or otherwise settled. The memorandum shall be protected by the attorney work-product privilege until the pending litigation has been finally adjudicated or otherwise settled. [Gov. Code Sec. 6254.25].

V. PROCEDURE

A. Requesting Copies of Public Records

All requests for copies of public records must be made in writing addressed to the Public Records Unit. The public may use the Public Records Request Form on the Agency's web page at www.asila.org. Requests may be sent by facsimile to the Public Records Unit at (213) 270-6043 or by mail to PO Box 5728, El Monte, CA, 91734. All requests must be made with sufficient clarity so as to reasonably describe an identifiable record. [Gov. Code Sec. 6253]. Requests not meeting these criteria may be returned. Reasonable restrictions may be imposed upon general requests for voluminous classes of documents. Copies will be provided unless, 1) disclosure would infringe a copyright, 2) the records are exempt from disclosure by express

provisions of the law, or 3) the volume of requested records would be impracticable for the Agency's day to day operation. Computer data will be provided in a form determined by the Agency. [Gov. Code Sec. 6253(b)]. Records held by the Agency in electronic format may be requested in accordance with provisions specified in Gov. Code Sec. 6253.9.

B. Response Time

The Agency shall determine within 10 days from receipt of the public records request if the request, in whole or in part, seeks copies of discloseable public records in the possession of the Agency. In unusual circumstances, additional time up to 14 days may be warranted. The Agency shall promptly notify the requestor of its determination and the reasons therefor. [Gov. Code Sec. 6253(c)]. If there is a large amount of material to compile, or if there is a question regarding the status of the requested records, the requestor will be notified by Agency staff of the approximate time frame involved in filling the request.

C. Exempt Records and Trade Secrets

Records that are exempt from the Public Records Act will normally not be released. Records claimed by a facility or entity to be trade secrets or otherwise exempt from disclosure will not be immediately released unless the Agency determines they are clearly public records. Only information claimed to be a trade secret at the time of submittal to the Agency may be treated as a trade secret. [Masonite Corp. v. County of Mendocino A.Q.M.D., 49 Ca1.Rptr.2d 639 (1996)].

The Agency will mail a notice, by certified mail, to the facility or entity claiming exempt or trade secret status. The facility or entity is responsible for providing its current mailing address to the Agency. The notice shall include a copy of the request, and a request for a detailed and complete justification of the bases for exempt or trade secret status, as defined in Section IV. The facility or entity must make an appointment with Public Records Staff, within 15 calendar days of the date of the letter, to come in and review the records and highlight the portion exempt or trade secret. If no justification is timely received, the subject records shall be released as specified herein.

Any justification claiming trade secret status must include a sworn declaration that should address the following six factors (Restatement of Torts Sec. 757.):

- 1) the extent to which the information is known outside of the person's business;
- 2) the extent to which it is known by employees and others involved in the person's business;
- 3) the extent of measures taken by the person to guard the secrecy of the information;

- 4) the value of the information to the person's business and to the person's competitors;
- 5) the amount of effort or money expended by the person in developing the information; and
- 6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

In addition, any justification must be specific enough so as to identify which specific information in a document constitutes a trade secret or is exempt so that it may be blocked out in a document, with the remaining information to be released. As a result, all documents subject to the request should be reviewed by the facility or entity claiming exempt or trade secret status before submitting its justification to enable it to specifically segregate information contained in those documents that may or may not be released. Failure to so segregate may result in the release of all information.

The Agency shall evaluate the justification, and any other information at its disposal and shall determine if the justification supports the claim that the material is in fact exempt or is a trade secret under Government Code Section 6254 and Section 6254.7, or otherwise privileged. If the Agency determines that the claim is bona fide and that the material is exempt or a trade secret, the Public Records Coordinator shall notify the requestor that the data sought is exempt or a trade secret and therefore cannot be released. The requestor shall be advised of its right to bring appropriate legal action to compel disclosure. Any such action should name the facility or entity claiming an exemption from disclosure as a real party in interest.

If the Agency determines that the claim of exemption or trade secret is not meritorious or is inadequately supported by the evidence, the Agency shall promptly notify, by certified mail, the facility or entity who claimed exempt or trade secret status that the justification is inadequate, and that the information shall be released after 10 calendar days from the date of receipt of such notice.

Such facility or entity shall also be advised of its right to bring appropriate legal action to prevent disclosure, and of its right to further respond. In the event the facility or entity cannot be reached at its last listed address with the Agency, the information shall be released after 15 calendar days of the date of such notice.

Any legal action brought by the facility or entity should name the requestor as a real party in interest. The above procedures regarding exempt records and trade secrets may not apply to requests made by other governmental agencies for purposes of carrying out their official responsibilities, if such agencies agree to treat the disclosed material as confidential pursuant to a written confidentiality agreement with the Agency. The confidentiality agreement shall designate those persons authorized by the requesting governmental agency to obtain the information. [Gov. Code Sec. 6254.5].

The above procedures are also inapplicable if the requestor and the facility or entity enters into an agreement waiving any objections to the Agency's release of the requested information. A signed copy of the agreement must be provided to the Agency.

D. Subpoenas

The Public Records Act is not applicable in situations where subpoenas have been issued to the Agency for document production. Any such subpoenas shall be referred to the Agency Counsel's Office, unless otherwise directed by that office.

E. Requests for Access to Inspect Specific Files

It is the policy of the Agency that all records open for public inspection shall be available with the least possible delay and expense to the requesting party.

Public records are open to inspection at all times during the office hours of the Agency, and every citizen has a right to inspect any public record as defined herein. To permit sufficient time for the Agency to compile the records for review, an appointment to view the records should be made by the requestor. A request to inspect public records in the custody of the Agency must be in writing and must describe the records with sufficient specificity to enable the Agency to identify the information sought.

Records that are exempt from the Public Records Act and records claimed to contain trade secrets will be handled in the manner described in Subsection C. If a delay occurs, the requestor will be notified of the reasons and offered the option of either viewing that portion of the record that is available, or waiting until the complete record is available.

A designated Agency representative will be available to assist the requestor during the inspection. The requestor will be provided with the records and a work space. A designated Agency representative will ensure that no records are removed or altered. If the requestor asks for photocopies of certain records, the Public Records Unit will arrange for the copies to be made and mailed within 10 business days. The following requirements regarding fees will be applicable.

VI. FEES

The Public Records Act requires "payment of fees covering direct costs of duplication, or a statutory fee, if applicable." [Gov. Code Sec. 6253(b)]. In addition, when records are requested in electronic format, the requestor shall bear the cost of producing a copy of the record, including the cost to construct the record and the cost of programming and computer services necessary to produce a copy of the

record. [Gov. Code Sec. 6253.9] The Public Records Unit will provide an invoice for charges due. These charges are due and payable before the release of the copied records. Nonpayment of invoices could result in a requirement that requests for records be pre-paid in person before releasing the requested documents.

A. Fees for Copies of Public Records

The Finance Division shall set the rate to be charged for the direct cost of duplication. Currently, there is no charge for copies totaling less than 10 pages. For 10 or more pages, the fee is currently 20 cents per page for all standard size pages, including the first 9 pages.

Records duplication cost:

11" x 17"	.20 cents Per Copy
Color Copies 8.5" X 11"	1.00 Per Copy
Color Copies 11" X 17"	1.00 Per Copy
Oversize Documents 22 x 34	5.00 Per Copy
Cassettes Duplication	5.00 Per Cassette
Compact Disk Preparation	5.00 Per Disk

The requestor may arrange for a private copying service to come to the Agency to photocopy the records after an appointment has been made with the Public Records Unit Staff. The Public Records Unit Staff, or a designated representative, will ensure that no records are removed or altered. If the records are contained in a form other than hard copies, i.e., computer diskette or microfiche, the following charges are applicable:

Fees for programming and computer services will be based on the cost of the staff performing the work. The level of staff needed to fulfill the request for electronic information could vary depending on the intricacies and complexity of the request. For significant efforts, the requestor may be required to pay a portion or all of these costs in advance of commencing the work.

VII. RESPONSIBILITIES

A. Public Records Unit

The Executive Director will designate the Agency staff member that will have primary responsibility for coordinating the Agency's compliance with the California Public Records Act. That responsibility includes:

- 1) Receiving, logging, and tracking all requests for public records;
- 2) Determining the possible location of the records, and routing copies of requests to the appropriate organizational unit to obtain copies of records requested and following up to meet return date deadlines;
- 3) Assisting the public in understanding what information is available, and what must be done to obtain access to, or copies of, public records;
- 4) Ensuring that the Agency Counsel's Office reviews any material subject to confidentiality of data or trade secret status and provides their comments as to whether the requested records may be released;
- 5) If a record has been identified as a trade secret or appears to be confidential, follow the procedures outlined above dealing with trade secrets;
- 6) Providing the necessary notices and public records within the appropriate period of time as outlined in these guidelines;
- 7) Ensuring that all records are safeguarded while in the possession of the office in charge of Public Records Requests;
- 8) Making sure that all originals of records are returned to the appropriate organizational units as soon as possible;

B. Organizational Units in Custody of Records

The Agency's organizational units are custodians of their own records created as a result of their activities, whether or not they are storing the records. The custodial units will be responsible for retrieving, gathering, and copying the records requested of them. These records are to be reviewed by the organizational unit manager for information that is a trade secret or otherwise exempt from disclosure. Such information, if reasonably segregable, shall be redacted under the guidance of the Agency Counsel's Office.

The custodial unit must determine if they are, or are not, in possession of the records requested and notify the Public Records Unit so they may comply with the response time specified in Section V.B of these guidelines [Gov. Code Sec. 62S3(c)]. If there are records in response to the request, the properly reviewed records will be promptly provided to the Public Records Unit.

C. Records Management Unit

The Records Management Unit of the Agency is not considered to be the custodian of records. Any requested records in its possession will be provided to the Public Records Unit, who will send the requested records to the custodial unit to review for confidentiality.

D. Agency General Counsel

Requests for records pertaining to documents which may not be released due to pending litigation or pending Civil Cases will be provided to the Agency General

Counsel who will be responsible for the timely identification and review of those records and will determine which records may be released.

The Agency Counsel is also responsible for providing legal guidance in determining which records may be released under the Public Records Act. The Public Records Unit shall provide Counsel with those documents that are alleged to be trade secrets or exempt from the Public Records Act. In addition, the Public Records Unit will immediately provide Counsel with all correspondence relating to the justification of exempt or trade secret status. The Public Records Unit will then be responsible for maintaining in a separate file those records which may not be released, and for releasing the remaining records pursuant to these guidelines, in compliance with the California Public Records Act.