



## ***POLICY FOR RESPONDING TO PUBLIC RECORDS ACT REQUESTS***

Adopted: 8/13/2019

### **I. PURPOSE AND SCOPE**

It is the purpose of the District to establish a policy for responding to requests from the public to inspect or obtain copies of District records in accordance with the Public Records Act (Gov. Code § 6250 et seq.) and the California Constitution (Art. I, § 3(b)). Nothing herein is intended to waive exemptions for particular records set forth in the Public Records Act or other law.

This Policy covers all District records that relate to the conduct of the public's business and are prepared, owned, used, or retained by the District in the ordinary course of business.

"Records" generally include writings whether handwritten, typed, printed, emailed, faxed, or stored in any electronic or other medium, as well as pictures and video and sound recordings. For a full definition of "writing" as used in the Act, see Gov. Code § 6252(g).

A request for public records may be made by any member of the public, whether or not a constituent of the District, or by any business, organization, or other entity. District officials (e.g., Board Members and officers) have the same status as members of the public under the Act, but of course may review records related to their official duties without making a Public Records Act request.

The District is required to respond to a Public Records Act request within ten days.

### **II. RESPONSIBILITY**

The Policy for Responding to Public Records Act Requests shall be administered by the Clerk of the Board, in consultation with the General Manager and the District's attorney. When applicable, each department head or designee shall work with the Clerk of the Board to locate and compile documents which may be responsive to Public Records Act requests.

### **III. SPECIFIC POLICIES**

#### **Receipt of Public Records Act Request**

The District shall request that Public Records Act requests ("Records Requests") be made directly to the Clerk of the Board, in a writing that reasonably outlines the

categories of records sought. However, the District cannot compel a party to submit a written request (verbal requests are permitted), nor to submit the request directly to the Clerk of the Board (requests may be made to any District employee, and submitted by letter, email, fax, phone call, or other means). Moreover, the District is responsible for assisting the requestor to make a focused and effective request.

Thus, District employees should ask parties requesting public records to submit the request in writing to the Clerk of the Board, but should be prepared to accept and assist with requests submitted by other means. In such cases, the employee receiving the request should seek to ensure the following information is included with the request: (a) the requestor's contact information (unless the requestor declines to provide it); (b) a reasonable description of the records requested; and (c) whether the requestor wants copies of the records or to inspect the records at the District.

When a Records Request is received by a District employee, he or she should immediately forward the Request to the Clerk of the Board, who will provide the request to the General Manager. The General Manager will determine if any other department heads should receive a copy. The General Manager and attorney should determine if the Records Request covers records that are confidential or otherwise exempt from disclosure under the Public Records Act, or if it appears that the Records Request might be related to potential or pending litigation.

### **Initial Processing of the Records Request**

Upon receipt of a Records Request, the Clerk of the Board shall immediately (a) date stamp the Records Request; (b) scan the Records Request to the appropriate folder; and (c) enter the Records Request into the Public Records Act Log. (See section 9 below, for discussion of Public Records Act Log.)

### **Gathering Records for Potential Disclosure**

The Clerk of the Board shall ensure that a Records Request is distributed to each District department which might have responsive records and request that the department(s) provide the Clerk of the Board the following information within three business days: (a) whether there may be responsive records; (b) a time estimate to provide the potentially responsive records to the Clerk of the Board's office for review, and (c) whether the department anticipates that more than ten calendar days from the date of the request will be needed to locate all potentially responsive public records.

The Clerk of the Board should check in with the relevant departments periodically to ensure the Records Request is processed in a timely manner.

### **Response Deadlines**

The District has a maximum of ten calendar days from receipt of the Records Request to notify the requestor whether there are District records in response to the Request. If the tenth day falls on a weekend or holiday, the deadline rolls to the next business day. In "unusual circumstances," the Clerk of the Board can, by

written notice to the requestor, extend the District's time to respond to the request for up to fourteen additional days pursuant to Gov. Code § 6253(c). The "unusual circumstances" recognized by the Public Records Act are:

- A. The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the Records Request.
- B. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single Records Request.
- C. The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the Records Request or among two or more components of the District having substantial subject matter interest therein.
- D. The need to compile data, write programming language or a computer program, or construct a computer report to extract data.

#### **Determining Whether Records Are Exempt from Disclosure**

Several types of records are generally deemed confidential or otherwise exempt from disclosure under the Public Records Act. If the Clerk of the Board believes that a Records Request potentially involves exempt records, he/she should discuss the Records Request with the General Manager, who should confer with District attorney for an opinion on the matter.

- A. Common Exemptions: Many, but not all, of the exemptions are contained within the text of the Public Records Act (e.g., Gov. Code §§ 6254, 6255). Examples of records that are usually exempt from disclosure are:
  - i. Preliminary drafts of certain documents that are not retained by the District in the ordinary course of business;
  - ii. Records related to pending litigation, including claims or lawsuits that are not yet adjudicated or settled;
  - iii. Attorney-client communications, which generally includes all communications between the District's attorney and a District employee or official;
  - iv. Personnel records, medical information, or other similar records the disclosure of which would constitute an unwarranted invasion of personal privacy;
  - v. Personal confidential information, like drivers' licenses, social security numbers and, in some instances, personal contact information (however, addresses, email addresses and phone numbers provided to the District

on District forms or contracts may generally be disclosed on the grounds that the party who submitted his or her contact information did not retain an expectation of privacy);

- vi. Taxpayer information in connection with collection of local taxes;
- vii. Feasibility studies for public contracts or property acquisition (unless required to disclose under eminent domain law) - until the contract is entered or the property acquired;
- viii. Computer Software which includes computer systems, mapping programs and graphic programs;
- ix. Architectural and official building plans – plans may be inspected but may not be copied, absent approval from the owner and design professional;
- x. Statements of personal worth or personal financial data required by the District and filed by an applicant to establish personal qualifications for a license, certificate, or permit; Proprietary or trade secret information submitted by a business or business owner; and
- xi. Where the public interest in nondisclosure clearly outweighs the public interest in disclosure (the catch-all exemption).

The foregoing are examples, not a complete list, of potential exemptions. Final exemption determinations shall be made by the District's attorney.

- B. Process Regarding Disclosure of Third-Party Information that Is Potentially Exempt: Some District records include third party information for which an exemption determination is a close call. The District should seek to ensure that the third party's rights are honored with respect to whether such information is exempt or is a disclosable public record. All public records act requests that involve third party information should be discussed with the District's attorney to determine whether disclosure is mandated.

### **Responding to the Records Request**

The Clerk of the Board shall notify the requestor: (a) whether the District has records responsive to the Records Request and (b) whether all responsive records will be disclosed, or whether any records will be withheld or redacted because of an exemption.

If the District determines that some or all of the requested documents are exempt from disclosure, the response must identify the ground(s) for the exemption(s), and the name of the Clerk of the Board or the District's attorney (as the case may be) as the person responsible for such exemption determination. Such exemption determinations shall be provided in writing.

The District must promptly provide the requestor with the opportunity to obtain copies of public records or to inspect them before determining which records to have copied. (Gov. Code § 6253(b)) In most circumstances, the records will be produced or made available for inspection when the Clerk of the Board notifies the requestor that there are records responsive to the request (whether that response is made per the 10-day deadline or, in “unusual circumstances,” per the 14-day extension). However, when the Records Request involves a significant volume of documents, the District may take additional time to provide the records. But in all cases, the District must provide the records as soon as reasonably possible.

### **Copies of Records**

If copies are requested, the District will charge a per page fee. For most records, the fee will be established by the District’s fee schedule; for some records, state law establishes the fee (e.g., for copies of official’s financial disclosures—Form 700.) (See Gov. Code § 6253(b) and Gov. Code § 81008.) The District’s direct cost of duplicating unusual records— e.g., blueprints, computer disks, DVDs, electronic back-up tapes—are calculated on a case-by-case basis. In the Clerk of the Board’s discretion, if the Records Request does not involve a significant volume of documents and the requestor agrees, the Clerk of the Board may scan the records and send PDFs to the requestor electronically. If the request involves a substantial amount of copying, the Clerk of the Board should obtain payment before providing the copies.

### **Inspection of Records**

Where only inspection is requested, the records will ordinarily be made available for inspection during all normal District business hours. If the request seeks review of voluminous records, a mutually-agreeable time will be scheduled for the inspection. The operational functions of the District will not be suspended to permit inspection of records during periods in which such records are reasonably required by District personnel in the performance of their duties. District personnel must be present during the inspection of records in order to protect the integrity of the records. Persons inspecting records shall not destroy, mutilate, deface, alter, or remove public records from the inspection location. If copies are some or all of the records are requested following the inspection, the District will charge fees for copies as discussed above.

Additional rules apply for requests for certain records, e.g., electronic records and Political Reform Act Records, as discussed next.

### **Electronic Records**

When requested, existing electronic records must be provided in electronic form. Such records must be provided in any electronic format requested as long as the format is one that is currently used by the District. The District is not required to reconstruct records that it no longer maintains in an electronic format. (Gov. Code § 6253.9(c))

The District is not required to produce documents in formats, e.g., word processing formats such as Microsoft Word, if it “...would jeopardize or compromise the

security or integrity of the original record or of any proprietary software ....” (Gov. Code § 6253.9(f)) In such situations, the District should convert the record to a “format which is less easily manipulated, such as PDF format.” (Gov. Code § 6253.9(f))

The District may offer to produce records in an electronic format, but may not insist that they only be provided in electronic format. (Gov't Code § 6253.9(d), (e))

The District may charge for the added cost of producing electronic records if (1) the request calls for producing the record at a time different than the time the record would ordinarily be produced (e.g., a copy of the check register for a period other than the one typically prepared for the District Council); or (2) the request requires data compilation, extraction, or programming. (Gov. Code § 6253.9(b))

### **Political Reform Act Records**

Every report and statement filed pursuant to the Political Reform Act is a public record open for public inspection and reproduction during regular business hours, commencing as soon as practical, but in any event not later than the second business day following the day on which it was received. (Gov. Code § 81008) No conditions shall be imposed upon persons desiring to inspect or reproduce reports and statements filed under this title, nor shall any information or identification be required from these persons. Copies shall be provided at a charge not-to-exceed ten cents (\$0.10) per page. In addition, the filing officer may charge a retrieval fee not to exceed five dollars (\$5) per request for copies of reports and statements which are five or more years old. A request for more than one report or statement at the same time shall be considered a single request.

### **Public Records Act Request Log**

The Clerk of the Board shall maintain a log of Records Requests. Each log should summarize the following information, if available: (a) name of requestor; (b) summary of information requested; (c) whether public records were provided by a District department or the Clerk of the Board; (d) the date of the response(s) (including without limitation any and all initial responses, extensions, and production dates); (e) whether any documents were withheld and/or redacted and the authority therefore; (f) a description of the documents provided in response; and (f) the amount of fees collected. The log should be kept in the Clerk of the Board's Office.