



SISKIYOU RESOURCE CONSERVATION DISTRICT

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Public Records Request Policy

Adopted April 12, 2018

Introduction: The California Public Records Act

The California Public Records Act, or "CPRA," requires governmental records to be made available to the public upon request, subject to certain exemptions¹. The Siskiyou Resource Conservation District (RCD) is subject to the CPRA, and this Public Records Request Policy is designed to help RCD employees properly respond to a Public Records Act request.

Under the CPRA, any person has the right to inspect any non-exempt public record during a state or local agency's normal office hours, and to make copies of those records or, for a fee, have copies made by the agency. The requesting party must take reasonable steps to identify the record he or she wishes to inspect: a request for "all emails from 2018" or "all records concerning fish" would be overly broad, but a request for "all records used in preparation for" a given CEQA document" would probably be lawful.

In many cases the requested records will be available electronically, and can be delivered to the requester without duplication costs. If a requester desires hard copies of records or requests records that cannot be provided electronically, the agency may collect a reasonable fee for duplication. A requester may also inspect the records in person by appointment, and make copies with their own equipment at no charge.

In all cases, agency personnel who are charged with filling a CPRA request must review the request to ensure that no requested documents are exempt from public review prior to releasing them.

1. What is a proper CPRA Request?

A proper CPRA Request must reasonably identify disclosable records, and must be accompanied by a statement of willingness to pay duplication fees for any records that will be supplied in hard copy or that must be scanned by an agency employee in order to be provided electronically. (If the requester wishes to inspect the records in person, no fees may be charged.) Requests need not be in writing. A request can be made orally, although in such cases an agency should ask for a written request or record the request themselves in writing and read the request back to the requester to ensure it is correct.

¹ The California Public Records Act can be found at Government Code Section 6253 *et. seq.*

A request must be for "public records." Public records are defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." This is a very broad definition and includes anything written, drawn, transmitted or created electronically, recorded on digital or analog media, or stored in any form. A photograph is a record, as is a spreadsheet, an email, a map, a PowerPoint presentation, and meeting notes. If it is some form of communication or data, it most likely qualifies as a "record."

However, not all records are public records. A public record is one which is kept because it is necessary or convenient in the discharge of official duties. Thus, a personal message from a friend concerning non-official matters, or personal notes that happen to be in an agency employee's work station would not be considered public records. However, employees should be cautioned that, under the CPRA, their communications with others in any official capacity are most likely releasable to the public, and should not be considered private.

The request must be for records that are in "possession" of the agency, which generally means in the physical custody of the agency. However, in some cases records may be responsive because they were generated or retained for or by the agency, but are not in the physical custody of the agency at the time of the request. For example, if responsive records exist but are in the possession of a contractor at the time of the request, the RCD would need to seek the records from the contractor. Mere lack of physical custody does not necessarily release the agency from its responsibility to provide the record for inspection.

An agency is not required to generate a record that does not exist. For example, if there is a request for "a list of all projects for the purpose of enhancing coho salmon habitat in 2014" and the RCD has no such list, it is not required to prepare one even if doing so would be trivial. However, an agency is not prohibited from preparing such a record if it wishes.

There are no limitations on who may file a request. Any person or entity has the right to access public records, including for-profit entities and the news media. The requester need not be a resident of California. Moreover, the requester need not articulate a reason for the request. Mere idle curiosity is sufficient.

If a request is unclear, an agency must make a reasonable effort to elicit additional clarifying information. If the request is voluminous or requires inordinate searching, it may be found to place an undue burden on the agency if the public interest served by the request is minimal compared to the resources necessary to comply with the request. Such a finding must be made carefully, however, and preferably by an agency's legal counsel.

2. What is a proper response to a CPRA Request?

When a request is received, it should be promptly time-stamped and logged. An agency must determine within 10 calendar days starting the day after the date of receipt of the request whether the request seeks copies of identifiable and disclosable public records. The agency must notify the requester of this determination. (If the tenth day falls on a weekend or holiday, the next business day is considered the deadline.) This ten-day period is granted for making a *determination* as to the identity and disclosability of the records; the actual inspection of or

release of the records must be made “promptly” after this period, and the requester must be given the date the records will be provided for inspection or copying. (Agencies may of course satisfy a request in much shorter time periods if they choose to do so.)

In unusual circumstances an agency may grant itself an extension of up to 14 days in order to make a determination as to the identity and disclosability of the records. Unusual circumstances include the need to search through voluminous material or the need to search field offices for the records.

The agency has a duty to make a reasonable effort to search for responsive records. The request should be referred for review and response to the person most likely to be in possession of the records.

If no responsive records are found after conducting a reasonable search, the requester must be informed and given a “no records” response. If responsive records are found, they must be reviewed to determine whether they are to be disclosed, disclosed with redactions, or withheld. If a record does not exist, is withheld, or is released with redactions, the agency must respond in writing and identify the name and title of the official who made the decision. If a record is redacted or withheld, the agency must identify the specific exemption and demonstrate that there is a predominant interest in non-disclosure.

3. What records are exempt from public review?

There are many exemptions, including a catch-all exemption that allows an agency to withhold a record when it can demonstrate the public interest served by disclosing the record is clearly outweighed by the public interest in withholding it.

Most exemptions are obvious and unlikely to be encountered by the Siskiyou RCD. Medical or voting records of employees, for example, or records related to on-going law enforcement actions are exempt. Any personal financial information of applicants, clients, subcontractors or vendors would be exempt.

One exemption that may be important is an exemption for records that are part of the “deliberative process,” such as draft documents or meeting notes concerning a project that is underway. If disclosure of a record would discourage candid discussion and undermine the agency’s ability to perform its functions, it may be withheld.

4. Failure to Comply

If a requester feels that a CPRA response is improper, they may file a civil action to obtain a court order for the release of the records. Although destruction of public records is a felony, there are no criminal sanctions for improperly withholding documents from a requester. A public agency can, however, incur significant legal costs from improperly withholding public records. A court will award costs and reasonable attorney fees to a plaintiff who prevails in such litigation.

Public Records Request Policy and Procedures

1. General Provisions

Section 6253 of the Government Code provides that every person has a right to inspect any public record that is not specifically exempted by law. A "public record" is any writing containing information related to the conduct of the public's business prepared, owned, used, or retained by the Siskiyou Resource Conservation District (RCD) regardless of its physical form or characteristics.

The California Public Records Act ("CPRA") permits local agencies to adopt regulations stating the procedures they follow when making their records available to the public. This Policy is to affirm the public's right to access Siskiyou RCD records and set forth the Siskiyou RCD's procedure to ensure accessibility of information to members of the public in accordance with the CPRA.

2. Assignment of Public Records Act Officer

The Siskiyou RCD Board of Directors will assign a Siskiyou RCD employee the responsibility of overseeing Public Records Requests. The Public Records Act Officer will consult with a designated member of the Board of Directors before responding to a Public Records Request.

3. Receipt of Records Request; Time Limits

Any Public Records Request will be logged at the time of receipt in a file dedicated to that purpose. Requests made orally will, if possible, be referred to and be recorded by the Siskiyou RCD Public Records Act Officer, and the recorded request will be read back to the requester to ensure it is an accurate representation of the request. Oral requests made in person may only be made at the Siskiyou RCD office during official business hours; oral requests made by voicemail will be logged upon receipt.

Siskiyou RCD employees will urge a requester to make a request in writing in order to avoid miscommunication.

At the time of logging the request, the Public Records Act Officer will calculate the ten-day deadline for response. The deadline will be the tenth calendar day beginning the calendar day *after* the day the request was logged. If the tenth calendar day falls on a weekend or holiday, the deadline for response will be the first business day after the tenth day. The Siskiyou RCD will strive to respond to requests sooner than the ten-day deadline.

Should a request be particularly voluminous or require a search that extends outside the Siskiyou RCD Office, a determination will be made whether an extension is needed. If an extension is needed it will be communicated as soon as possible to the requester.

4. Determination of Identity of Records and Whether to Disclose

Prior to the end of the ten-day period, a determination will be made as to the identity of the documents requested, where they will most likely be found if they exist, and whether they are subject to an exemption. The individual who is most likely to hold the records will be contacted promptly after receipt of the request, and a search will be made for the responsive records.

The Siskiyou RCD Public Records Act Officer will review the records to determine whether they are releasable in whole or in part, and whether they will require redactions. The Officer will also ensure that the records supplied fully meet the request.

If the identity of the requested records is uncertain, the Public Records Act Officer will contact the requester to seek more information, and ultimately make a determination on the existence of the records. The Public Records Act Officer will inform the requester within the ten-day time limit when and how the records will be made available, and what the expected duplication fee will be, if any. The Public Records Act Officer will ask the requester if the records are to be delivered electronically (where possible) or if they are to be provided in hard copy.

If an extension is determined to be needed in order to locate and identify the records, the Siskiyou RCD Public Records Act Officer will inform the requester in writing of that determination and why it was made, and when the requester can expect a response. The extension will under no circumstances exceed fourteen days (in addition to the original ten-day period).

5. Exemptions

Prior to release, all records will be inspected by the Siskiyou RCD Public Records Act Officer to ensure their release is lawful and the records are not subject to an exemption. Exemptions include personnel records, matters of on-going law enforcement or litigation, drafts, and material that is protected by state or federal statutes. Records may also be withheld whenever the public interest in nondisclosure clearly outweighs the public interest in disclosure. This test concerns the public's interest, not the interests of the Siskiyou RCD.

The Siskiyou RCD Public Records Act Officer, upon determining a record is exempt, will make a finding as to whether the entire record is exempt or whether the exempt material can be redacted. The existence of some exempt material in a record does not render the entire record exempt.

The most common exemptions are:

A. Personnel, medical, and similar records that would constitute an unwarranted invasion of privacy. These records contain intimate or personal information about employees. An example of a record exempt for this reason would be notes or other records prepared about an employee by that employee's supervisors for reason of employment, discipline, promotion, or other personnel matters. Some records, such as medical records, are automatically exempt; other records, such as an employee's resume, are only exempt after a finding that the privacy interest outweighs the public interest in disclosure. Such a finding will be made in consultation with legal counsel.

B. Drafts and preliminary memoranda. Records that are notes, drafts, or memoranda and are not retained in the ordinary course of business will be exempt if the public interest in nondisclosure clearly outweighs the public interest in disclosure.

C. Records relating to ongoing law enforcement investigations.

D. Records relating to ongoing litigation.

E. Records obtained by the Siskiyou RCD under assurances of confidentiality. These records may only be withheld after a finding is made that the public interest in nondisclosure outweighs the public interest in disclosure.

F. Records relating to trade/business decisions, appraisals, or market and crop reports of applicants or clients.

G. Records relating to personal financial data or home addresses of applicants, clients, subcontractors or vendors.

6. Disclosure

The records will be promptly supplied to the requester accompanied by a letter that identifies the records that were released and identifies any records that were withheld and under which exemption they were withheld. Redacted records will also be identified and the reasons for the redactions given.

The letter will be retained in a file along with the original request.

Authorization

The Siskiyou Resource Conservation District Board of Directors, by Board motion, second and approval, adopted this Public Records Request Policy on April 12, 2018 and it shall be effective as of this date to supersede all other previous versions.

Signed: Caroline Luiz
Caroline Luiz, Board Chairman

Dated: 4/23/18