

Title VII, Policy No. 1200: Managing Public Records Act Requests

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1200.010 Purpose.

The purpose of this policy is to provide information and procedures for County employees to follow in managing requests for inspection of, or copies of, records under the California Public Records Act (“PRA”). This policy is to be read consistently with, and interpreted in conformance with, the regulations and definitions contained in the California Public Records Act, set forth at Government Code section 7921.000. *et seq.* Any questions regarding the interpretation of this policy should be directed to the assigned PRA Attorney in the County Counsel’s Office.

The PRA declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in California. In accordance with the PRA, any person is entitled to inspect and to receive copies of the public records held by the County, unless an express exemption applies. Unless an express exemption applies, County staff shall make requested records promptly available to any person upon payment of applicable fees.

1200.030 Definitions.

As used in this policy, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(A) “Disclosable Public Records” are those public records that are not exempt from public disclosure under a specific exemption provided in the PRA or another State or federal law and are to be provided to requesters pursuant to the terms of this policy.

(B) “Public Records” include any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by the County or an employee of the County, regardless of physical form or characteristics.

(C) “Public Records” would be any archival information retained by the County that may be provided to a Requestor. Records may include common County policies or procedures, public meeting agendas, public contracts, recent press releases, etc. Public records requests may also include “all correspondence” regarding a subject, copies of an entire “file” on a subject matter, copies of documents held by specific County employees, documents that require redaction of confidential material, etc.

(D) “Writing” means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation,

including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. Writings ~~can~~ may include, but are not limited to, papers, books, maps, charts, photographs, audiotapes, videotapes, information stored in non-paper form on a computer or other electronic media, such as text messages or e-mails, and other material.

1200.50 General Requirements.

The following general requirements and guidelines shall be followed in responding to all PRA requests:

(A) Public records are open to inspection at all times during the hours that County offices are open for business, and every person has a right to inspect any disclosable public record, subject to the County's rights to protect the security and integrity of County records. If a record can be divided into disclosable and non-disclosable portions, the non-disclosable portions should be redacted and the disclosable portions should be produced for inspection.

(B) Employees may not ask a requester to provide a reason for a request, except under very limited circumstances explicitly allowed under the Government Code.

(C) Employees may not require a requester to provide his/her identity in order to request, inspect or obtain copies of disclosable public records.

(D) Employees may not turn away a requester because they are at the "wrong department." Instead, PRA Liaison (departmental employees responsible for responding to PRA requests) must take actions to enter the requested information into NextRequest, the County's PRA portal. If a Liaison receives a request assignment in error, that Liaison is to contact the PRA Requests Clerk of the Board to assist in determining the correct department and where possible the PRA Liaison for that department (see section 1200.070), and facilitate the requester's effort to make the request efficiently.

(E) Departmental PRA Liaisons may not require a requester to put a request in writing. Oral requests are permissible. If an oral request is made, the Liaison is to document the oral request in writing and data enter the request within the NextRequest portal as the Liaison understands it; ~~and~~ then follow the procedures set forth in this policy in responding to the request. Wherever possible, the Liaison should obtain agreement from the requester that the request is accurate as documented.

(F) If a requested Responsive Record does not exist at the time of the request, employees have no duty to create such a writing. However, at times, creating a Responsive Record may actually be a more efficient way to transmit requested information to a requester. Liaison may consult with County Counsel as needed. Additionally, Liaisons should use their best judgment, keeping in mind the principles of transparency promoted by the state statutory scheme, in determining how to most efficiently respond to a particular request.

- (1) Generally, Liaisons are required to make information that is held in an electronic format available to the public in that format where possible, provided that doing so will not jeopardize or compromise the security or integrity of such records. Liaisons should consult with County Counsel as to

any questions regarding this issue.

- (2) Liaisons should know the difference between a PRA request and a subpoena. Different rules are required for responses to subpoenas. Any questions should be referred to County Counsel.
- (3) Many exemptions to disclosure exist under the PRA, and they can be found starting at Government Code section 7927.500. If a Liaison is unclear about whether a certain exemption applies, he or she should consult County Counsel.
- (4) Form 700 Statements of Economic Interest are public records that are not subject to the strict procedures of the Public Records Act (e.g., the ten-day letter discussed in section 1200.070(D)(4)(b)). These documents must be provided as soon as possible during the County's regular business hours (and no later than two days from the request under any circumstances).
Reproduction costs not to exceed the published cost per page on the Unified Fee Schedule may be charged.

1200.070 Procedure.

(A) Designation of PRA Request Liaison; Responsibilities

- (1) Each department shall assign a member of its staff to act as the PRA Request Liaison for that department, as well as a back-up to for when that employee is out of the office to act as an alternate. Larger departments may have more than one PRA Liaison or may split the duties up among subdivisions within the department.
- (2) The PRA Request Liaison shall be responsible for all aspects of responding to Public Record Act Requests made to a department, including interacting with the requester to narrow the request, collecting fees, and producing records. The PRA Request Liaison shall be responsible for managing all PRA documentation in NextRequest for their departmental responses (discussed in subsection (C), below), interacting with the Office of the Clerk of the Board on requests that involve multiple departments, and consulting with County Counsel with regard to legal issues as needed.
- (3) Any employee designated as a PRA Request Liaison shall review this policy at least semi-annually and attend available quarterly training on PRA principles, issues, and obligations.
- (4) The County's Communications Manager shall maintain a list containing the names and contact information for all department PRA Request Liaisons. Departments shall promptly notify the PRA Requests Clerk of the Board and Communications Manager regarding any change in staffing the PRA Request Manager assignment.

(B) Managing Multi-Department Requests

The Office of the Clerk of the Board shall manage any Request that involves multiple departments.

- (1) The PRA Request Clerk of the Board Liaison will manage the releasing of responsive documents from the various departments once they have been reviewed and uploaded in the NextRequest portal; and communicate with the requester on behalf of the multiple departments that are responding to the request, in order to have one point of contact between the County and the requester. The PRA Request Clerk of the Board Liaison is not responsible for searching, reviewing, redacting, nor and obtaining responsive documents for multiple department PRA requests; (this remains a responsibility of the individual department that retains the responsive records). On any request that involves multiple departments, the department's PRA Liaison shall work cooperatively with the Clerk of the Board to obtain maximum efficiency.

(C) Maintenance of NextRequest PRA Portal

- (1) Each PRA Request Liaison shall maintain their portion of NextRequest (PRA software portal) that documents and time stamps the information for each Request:
 - a) The date the request is received;
 - b) Contact information for the requester;
 - c) The subject matter of the request;
 - d) The due date for the initial response (ten-day) template;
 - e) Any template letter for extension of the statutory deadlines regarding the request (by statutory authority or agreement);
 - f) Any exemptions to disclosure asserted;
 - g) Upload of responsive records relating to PRA correspondence (after any review and necessary redaction); and
 - h) Any relevant notes (internal or with the requester).

(D) Response Procedures

- (1) Requests may be responded to by any employee that has been given authority to respond to PRA requests on behalf of a department. All PRA requests and correspondences are to be documented in NextRequest for transparency and accurate date/time documentation
- (2) Employees responding to Requests should obtain payment in full from the requester in accordance with the cost recovery procedures set forth in section 1200.090 prior to producing the requested records. There shall be no charges associated with inspection of documents responsive to a Request; charges will only be assessed for retrieving records from off-site storage, creating flashdrives, and making tangible copies.
- (3) Requests should be handled by a department's PRA Request Liaison(s) where possible.
- (4) If a department is seeking legal guidance for a PRA request, the notification should clearly state that guidance is requested.

(E) Assisting the Public and Narrowing the Request

- (1) All requests for public records must be specific and focused enough to allow the County to identify the information being requested. If the request is unclear, overly broad, or unduly burdensome based on the way the request is drafted, Liaison(s) should respond to the requester to ask that the request be clarified. Under the PRA, the County has a duty to assist the public in making effective requests for public records. Liaison(s) can satisfy this duty by following the procedure below.
- (2) When a person requests to inspect or obtain a copy of a public record, staff shall assist the person to make a focused and effective request that reasonably describes an identifiable public record and any reproduction cost (if any). This includes, to the extent reasonable under the circumstances:
 - a) Assisting the person to identify records and information that are responsive to the request or to the purpose of the request, if stated;
 - b) Describing the information technology and physical location in which the records exist; and
 - c) Providing suggestions for overcoming any practical basis for denying access to the records or information sought.
- (3) Oftentimes requesters ask for “all” records, communications, or files regarding a subject matter when they are seeking specific documents, or documents produced within a specific date range. These requesters do not realize that drafting requests in such a broad manner results in a waste of time, as well as an over- production of materials that are unwanted. Where a PRA request is not naturally narrow and specific, a Liaison should interact with the requester to explain the process, the cost recovery principles embodied in the County Code, and the desire to get the requester what they are really looking for. In order to do this, one might ask the requester in writing:
 - a) “Can you narrow the scope of this request to a specific date?”
 - b) “Can you think of any keywords I could use to search for this?”
 - c) “Do you know what County departments or officials might have created the documents?”

Note that a requester is not required to agree to a suggested restriction; alternatively, the requester may agree to a restriction initially but may make another, broader request later. Any questions or concerns regarding whether a request is overly broad or unduly burdensome should be referred to County Counsel.

- (4) Deadlines for Responding: Where possible, documents should be produced for inspection or copying immediately upon request. However, as a practical matter, Liaison(s) may need time to identify and locate records and determine whether any exemptions or redactions may apply. The deadlines associated with responding to a PRA request take this issue into account, and provide the County with extra time to identify and produce records depending on the complexity of the request.
- a) Request Contact Information: Liaisons should ask the requester for contact information in order to keep the requester updated about the production status.
 - b) Ten-Day Letter: Within the initial ten calendar days (not business days) from the date the request is received, the PRA Liaison (or the PRA Request Clerk of the Board for multi- department requests) shall determine whether the request, in whole or in part, seeks copies of disclosable public records and shall notify the requester of what is available for production and the costs associated with the request, any applicable exemptions under which public records will be withheld, and the approximate date disclosable public records will be available. The ten-day letter should not be used to catalog exempt records, and staff should not create such a catalog without the guidance of County Counsel.
 - i. The County and the requester may negotiate an agreement to extend the time for the County to issue the ten-day letter. Any such extension should be documented in writing.
 - ii. NOTE: The start date for a ten-day response letter begins on the day *after* the request is received. For instance, if a request is received on January 1, the initial ten-day response letter must be mailed before close of business on January 11. Staff should consider weekends and holidays when calendaring responses, and should manage work-flow accordingly to ensure that the response is issued within ten calendar days of the request. Ten-day response letters may be e-mailed, or sent by U.S. mail so long as the letter is dated and post-marked prior to the expiration of the ten-day deadline. In the event that the 10th day falls on a weekend or County holiday, the response may be provided on the next business day; this is the *only* time the deadline can be extended due to a weekend or holiday.
 - iii. NOTE: Actually producing the requested records within 10 days of the date the request is received is NOT required. The ten- day deadline is the deadline for communicating to the requester whether documents will be produced. Staff have a reasonable amount of time to

actually produce the documents after determining whether documents will be produced. A “reasonable” time is not defined by law, but should be justifiable based on the scope of the request and the number of disclosable records; barring unusual circumstances, it should not take longer than 2-3 weeks following the original ten-day response letter is issued to produce responsive records.

- c) Fourteen-Day Extension: In unusual circumstances, the ten-day notification requirement may be extended without negotiation by up to an additional fourteen days (for a total of 24 days). Any such extension must be documented in writing and sent to the requester, For purposes of this analysis, “unusual circumstances” means:
 - i. The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;
 - ii. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request;
 - iii. The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein; or
 - iv. The need to compile data related to existing records, or write programming language or construct a computer report necessary to extract existing records.

- d) Use of Letter Templates: The NextRequest software has vetted templates for ten- day letters and fourteen-day extension letters. PRA Request Liaisons are encouraged to contact County Counsel’s Office if they need any assistance in issuing such letters.

(5) Determining Whether Responsive Records Exist

- a) Conducting a Search: Upon receiving a PRA Request, the PRA Liaison shall determine whether responsive public records exist. As part of this effort, responsible staff must make reasonable efforts to determine all of the locations where responsive documents are likely to exist and determine the identity of the particular individual(s) likely to possess or maintain the responsive documents. The PRA Request Liaison must also make reasonable efforts to contact individuals likely to hold responsive

records to determine whether they have responsive public records, including any records contained in non-County controlled locations such as private electronic media or mail accounts, private servers, or personal cell phones. All employees should remember that a public record maintains its inherent character as a public record regardless of where it is located.

- i. In determining whether a record kept on a private device or private server is a “public record”, the PRA Liaison should consider several factors, including 1) the content of the record; 2) the context of the record; 3) the purpose of the record; 4) the audience; and 5) whether the employee was acting within the scope of employment in preparing or receiving the communication.
- ii. If an employee responds that he/ or she has no responsive record(s) held on private accounts or devices, absent any contradictory information, the PRA Request Liaison should accept the employee’s response and act accordingly. If contradictory information indicates that an employee does have responsive records but is not cooperating in producing them for review, the PRA Liaison should consult with County Counsel to determine next steps.
- iii. Under no circumstances may a county employee demand access to another County employee’s private accounts or devices in order to search for responsive record(s). Although it is not anticipated that employees will refuse to produce responsive record(s) held in a private account or on a private device, if an employee acknowledges that record(s) exist but refuses to produce them, the PRA Request Manager record(s) should consult with County Counsel to determine next steps.

b) Exemptions

- i. In responding to a PRA request, staff should distinguish between “public records” and “disclosable public records.” Just because a public record exists does not mean that it is disclosable. It is only a disclosable public record if it is not exempt from disclosure. For example, the PRA contains exemptions for:

- Preliminary drafts, notes, or memoranda not

retained by the County in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure;

- Privileged legal writings and records pertaining to pending litigation;
- Personnel, medical, or similar files;
- Law enforcement investigatory records; and
- Many other specific topics (see Government Code section 7927.500 and succeeding sections).

ii. An additional exemption exists for any record for which it can be demonstrated that, on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record; however, staff should consult with County Counsel before asserting this particular exception.

iii. Specific criteria dictate whether exemptions are available in certain instances. Oftentimes these criteria are based on changing case law or statutory revisions. Staff should consult with County Counsel if they are unsure whether a public record is or is not exempt from disclosure.

c) E-mails: Staff are encouraged to consult with the Information Services Department and County Counsel whenever handling a PRA request for e-mails. E-mails may be stored on or off the County's server depending on the age of the record, and a request for e-mails may require the PRA Liaison to consult with a number of individual County employees to fulfill the County's statutory obligations.

(6) Collection of Costs: Where costs are collectible (see below) staff should collect those costs before producing responsive records.

1200.090 Cost Recovery.

(A) Where a charge for providing a copy of a public record is not already specifically defined under state law, staff should charge the requester the following amounts for any work done in responding to a PRA request:

- (1) A per page charge for duplication based on the fee set forth in the Unified Fee Schedule (currently \$1.00 USD). If the response requires duplication to a medium other than 8 ½ by 11-inch copy paper, the amount reasonably necessary to recover the cost of that medium and the use of any equipment

required for the duplication shall be used in place of the per page cost. Please note that if a record is available electronically, staff should offer to produce the record electronically at no cost to the requester.

- (2) The actual cost of the time of employees spent in locating, retrieving, reviewing, preparing, copying, and furnishing the records cannot be charged back to the requester. All other costs incurred in providing the copy including, without limitation, storage retrieval, USB purchase, etc.

(B) Costs may not be collected for fees or charges specified in Government Code section 54985(c) (staff should contact County Counsel with any questions regarding this).

(C) PRA Liaisons should provide a cost estimate to the requester and obtain payment in full prior to work on the request where retrieving boxes from storage, preparing a USB or other out-of-pocket expenses will be charged back to a requester. This ensures that the requester will not be surprised by any charges, and will have the opportunity to modify a request if necessary before work is completed. In addition, ten-day letters should include the costs and time window requirement to receive payment in full prior to any of said record(s) are to be pulled/reviewed. Other record(s) that do not incur a charge to retrieve are to be reviewed and released where applicable.

(E) Staff is encouraged to contact County Counsel for assistance as early as possible if a dispute arises regarding cost recovery.