

San Francisquito Creek Joint Powers Authority

Public Records Policy

April 28, 2022

The California Public Records Act, Government Code sections 6250 through 6276.48 (the “Act”), provides that the public has a right to inspect and obtain a copy of most of the records retained by public agencies in the course of doing business. The Legislature has declared that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in the state. The public’s right to access public records is also guaranteed by Article I, Section 3(b) of the California Constitution.

The right of access is not unlimited. By law, some records are exempt from disclosure. These exemptions generally protect two interests that compete with public disclosure. Some exemptions protect an individual’s fundamental right to privacy. Other exemptions protect records from disclosure to foster efficient and effective government functions and decision-making.

The San Francisquito Creek Joint Powers Authority (“SFCJPA”) maintains many public records. Unless there is a specific exemption listed in the Act or in another statute (see discussion below), most records maintained by SFCJPA in the ordinary course of business will be public records. In those cases where portions of a record are public and other portions are exempt from disclosure, staff will redact or remove the information that is exempt before disclosing the remainder of the record.

DEFINITION OF “PUBLIC RECORD”

As defined by the Act, public records are 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 characteristic. Writing is further defined to include any handwritten or typewritten document, photographs, pictures, drawings, audio or video recording, computer data, electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation.

REQUESTS FOR PUBLIC RECORD

Any member of the public may request to view or purchase a copy of an identifiable public record. The requester does not have to give their name or other identifying information such as address or telephone number, does not have to put their request in writing and does not have to explain why they want the record. A request may be made over the telephone, in person, in writing, by facsimile or electronic mail. However, SFCJPA encourages written requests, when possible, to more efficiently respond to a request.

Sometimes, requesters will incorrectly cite to the federal Freedom of Information Act (FOIA). Although FOIA is not applicable to SFCJPA, SFCJPA will respond to such requests as if the request had been made pursuant to the Public Records Act.

A requester must identify an actual public record; requests that are too vague cannot be fulfilled. Staff is required by statute to assist the requester in identifying the desired public records. Note that the Act does not require SFCJPA to create records that do not exist or that it does not normally retain, such as summaries of documents or compiled lists. However, SFCJPA must comply with certain requests for the extraction or compilation of electronic data (see below).

If a person makes a request for a record that does not exist, or that is vague, SFCJPA staff should nevertheless attempt to assist the requester in identifying existing records that contain the information being sought where possible, including records or information that is responsive to the purpose of the request, if stated. If reasonable under the circumstances, SFCJPA staff should also describe the information technology and physical location in which the records exist and provide suggestions for overcoming any practical basis for denying access to the records or information sought. In the event SFCJPA compiles an index of its records, provision of that index to a requester satisfies SFCJPA's obligation to assist the requester.

REQUESTS FOR ELECTRONIC RECORDS

A requester may ask for identifiable public records that exist in electronic format. Emails, recordings, and text messages relating to SFCJPA business can be public records if retained in the ordinary course of business. Some electronic data on personal devices used for SFCJPA business may be subject to disclosure as a public record. If the record is not exempt, SFCJPA must make the information available in electronic format in any electronic format in which it holds the information. In the event the requester specifies a specific electronic format, SFCJPA must produce the record in that format if the requested format is one that has been used by SFCJPA to create copies for its own use or for provision to other agencies.

However, SFCJPA is not required to release exempt electronic data, or to release an electronic record in electronic form if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

PROCEDURE FOR COMPLYING WITH A PUBLIC RECORDS ACT REQUEST

Request to Inspect Records: Public records should be available for inspection during normal business hours. Staff should monitor the inspection of original public records to ensure that SFCJPA records are not altered, destroyed, or removed from the premises.

If records are not immediately available because the records are being used by staff, are voluminous, or are stored off-site, or if staff is not available to monitor the inspection, staff may

ask the requester to make an appointment to view the records. The appointment date should be as soon as possible following the request.

If records must first be reviewed for exempt material or redacted, staff should follow the procedure in the next section regarding “Request for Copies of Records.”

Request for Copies of Records: SFCJPA staff has ten (10) calendar days to determine whether to grant the request and respond in writing to the requester with SFCJPA’s determination. The 10-day response period starts with the first calendar day after the date of receipt. For example, the determination for a request received on April 1 is due on April 11.

The 10-day response period is not the time period for complying with the request, rather it’s the time period for responding to the requester with a written determination as to whether records responsive have been located and what, if any, information from those records is exempt from disclosure. Some requests for records may not be fulfilled until after the 10-day response period has expired.

Content of the Determination Letter: If any information is exempt from disclosure and will be redacted or withheld from the requester, or if the request will be denied, the determination letter must so state and provide the reasons for redacting or withholding the records, which can be accomplished by providing a brief generalized description of the information withheld and citing to the exemptions that apply.

The letter must be signed with the name and title of the person responsible for the denial. If the request for copies is being granted, the determination letter should include a request for pre-payment of the applicable duplication costs and a statement that the copies will be made available a certain number of days after receipt of payment. Records do not have to be copied until after payment is received. If the request is to inspect records, then the letter should set forth the date after which the records will be available and invite the requester to call or write for an appointment. SFCJPA may not require a fee for inspection of records.

Duplication Costs: The cost for copying the records is the direct cost of duplication or a statutory fee, if applicable, and does not include staff time to research, retrieve, review or compile the records. SFCJPA has determined that the direct cost of duplication for normal sized photocopies is ten cents (10¢) per page, and for electronic records copied to disc or other electronic media, the fee is \$10. If an outside duplication firm is employed to make the requested copies, the cost charged to SFCJPA shall be passed along to the requester.

If the production of an electronic record requires staff or consultant services, the cost of producing such electronic copy shall be charged at the staff member’s fully burdened hourly rate, or if an outside consultant is used, at the cost charged to SFCJPA by the consultant.

Fourteen-Day Extension to Respond: In four statutorily defined “unusual circumstances,” SFCJPA may take up to an additional fourteen (14) calendar days to make a determination on the request. The four unusual circumstances are the following:

- The need to search for and collect records from an off-site location.
- The need to search for, collect and examine a large number of records.
- The need for consultation with another agency having an interest in the request or among two or more components of the agency receiving the request.
- The need to compile data, write a computer program or construct a computer report to extract data.

If it becomes necessary to invoke one or more of the above listed reasons for taking additional time in which to make a determination, written notification must be given to the requester by the 10th day following their request. This written notification must state the reason for the delay and the date on which a final determination will be provided to the requester.

EXEMPT RECORDS

The Act makes certain records exempt from disclosure. The following types of records are the most frequently requested documents that are exempt and therefore are not available to the public:

- Records relating to pending litigation matters;
- Personnel or medical records;
- Attorney/client privileged records;
- Preliminary drafts, notes or interoffice memoranda if they are not kept in the ordinary course of business, and the public interest in withholding the records clearly outweighs the public interest in disclosure;
- Real estate appraisals, engineering or feasibility estimates made for or by SFCJPA relating to the acquisition of real property until such time as the property has been acquired;
- Social Security numbers;
- Personal identifying information; and
- Records relating to assessment of the SFCJPA’s vulnerability to terrorist attacks or other criminal acts intended to disrupt its operations if prepared for or distributed in a closed session of the SFCJPA.

Records should first be checked against the exemptions in the Act or discussed with the SFCJPA’s General Counsel before release. It is important not to release exempt records to the public without authorization, as release of an exempt record could waive any applicable exemptions that would justify nondisclosure, and once released, the record may have to be given to anyone who requests it, unless an exception applies. Consult with SFCJPA’s General Counsel

in the event SFCJPA staff wants to share an exempt record with another public agency or someone not within SFCJPA's circle of privilege in order to determine whether an exception applies that would permit the record to be shared.

Section 6255 of the Act contains an exemption for records where the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. Courts will carefully scrutinize use of this provision, so it should be used only in extraordinary circumstances after consultation with SFCJPA's General Counsel.

SUBPOENAS FOR RECORDS

This administrative policy does not apply to subpoenas for records.