

DISCUSSION DOCUMENT J

PUBLIC RECORDS Discussion Document 2/16/07

The purpose of this discussion document is to:

- Summarize key requirements of the Public Records Act.
- Outline the City's current practice for responding to public requests for information.
- Provide an overview of key considerations.

This information is intended to lay the groundwork for an informed discussion about public records requirements.

A. KEY REQUIREMENTS OF THE PUBLIC RECORDS ACT

1. Who Must Comply with the Public Records Act?

All State and local agencies – including the City of San Jose and its boards and commissions – must comply with the Public Records Act.

2. What are Public Records?

The Public Records Act is designed to give the public access to information in possession of public agencies. All documents related to the public's business are public records, but some documents may be exempt from disclosure for certain reasons. The most common exemptions in the City of San Jose are:

- a. Attorney-client communications – to allow the City and other policy bodies within the City the protection of the attorney-client privilege;
- b. Deliberative process – where disclosure would impair the deliberative process by revealing the thought processes of government decision-makers and where the public interest in withholding the records outweighs the public interest in disclosing the records;
- c. Preliminary drafts, notes and memos when (1) they are not retained in the ordinary course of business; and (2) the public interest in withholding the records outweighs the public interest in disclosing the records – to provide a public agency privacy for written discourse concerning matters pending administrative action;

- d. Personnel and medical files – to protect the disclosure of intimate, private details;
 - e. Other private, third party information, such as home addresses and financial data – to protect the privacy of third parties; and
 - f. Law enforcement records – to protect the integrity of the investigation and the safety of the investigator, victim and complainant. Certain limited information in the “police blotter” is available, such as the time and circumstances of the call to the police, name of the arrestee and details of the arrest, warrants, charges, hearing dates.
3. How Does the Public Access Public Records?
- a. The public has the right to access records at all times during business hours.
 - b. The City and its boards and commissions must help a requestor frame his or her request so that he or she receives the records he or she is seeking.
 - c. The responder must decide what records will be produced within 10 days. The City and its boards and commissions may request an additional 14 days to respond under unusual circumstances.
 - d. If the responder determines that some records are exempt or should otherwise be withheld, it must explain why in writing.
 - e. The responder cannot charge a fee for retrieving records and may only charge direct copy costs..
 - f. If a record is available in electronic form, the responder may offer to produce the record in electronic form but may not only produce the record in electronic form.

Attachment A of this memo provides “A Pocket Guide to the California Public Records Act” prepared by The First Amendment Project, Society of Professional Journalists.

The Pocket Guide is a quick reference to the Public Records Act.

B. THE CITY'S CURRENT PRACTICE

1. Who makes Public Records Requests

- a. General public – frequent, mostly general information requests over the counter by individuals unaffiliated with the media or a particular lawsuit.
- b. Press – requests to develop a story (e.g., a request for emails concerning Team San Jose for last two years).
- c. Litigation
- d. Other – off-site mining of info by private parties for resale.

2. Public Records Policy and Protocol

In November of 2003, City Council directed the City Attorney to develop a protocol for responding to requests for public records. The *Public Records Policy and Protocol* was adopted by the City Council on January 27, 2004. The purpose of the policy is to affirm the public's right to access City records and to set forth the procedures that will facilitate accessibility of information to members of the public. The policy (see Attachment B) addresses how the public may access City records, how to locate and identify records, how to make a request for records, the time in which the City has to respond to a request for records, allowable fees and charges and a procedure for staff to use as guidance in responding to requests. The elements of the procedure include:

- Department Representatives (also known as “records coordinators”)
- Department Coordination
- Coordination with the City Attorney's Office
- Steps for Responding to Requests for Records
- Common Exemptions
- Responding to Requests for Particular Documents
- Records Retention

In January of 2005, the City Council also provided additional directives to ensure that the Public Records Policy and Protocol was being implemented consistently throughout the organization and to apply greater emphasis on the Council's affirmation of the public's right to access records. Outcomes from these directives were:

- The establishment of individual department PRA coordinators (approximately 57)
- Annual training is conducted to assure consistency throughout the organization, including Senior and Executive staff

- Continued work on Attorney approved department retention schedules
- Coordination and tracking of complex requests between departments
- Monthly reporting and tracking of PRA requests

Additionally, to assist the records coordinators in effectively handling their requests, the City's Intranet has a page with links for the search methodology, list of coordinators, checklists, sample documents, and departmental records retention schedules. The City Attorney and City Clerk review these tools and the procedures outlined in the policy annually during training provided for all departmental records coordinators.

Practical Application of the Policy:

Pursuant to the policy, each Council Appointee and City Department maintains and has custody of records and information relating to the responsibilities and work performed by the Office/Department. The Council Public Records Policy and Protocol requires each Department to designate a person who is responsible for responding to requests for records and coordinating the response with other City Offices/Departments if necessary. Departments that have more than one division within the Department must assign a person or persons who is responsible for coordinating and responding to requests for records and information that overlap different divisions within the Department.

If a request seeks information from more than one Office/Department, the response is coordinated by the City Clerk, City Manager or City Attorney, depending upon the nature and complexity of the request. Typically the City Clerk responds to requests for public records routinely maintained by the City Clerk's Office, as well as those associated with City Council activities and actions. The Administration coordinates responses to requests for information about the responsibilities and work performed by the City's many departments, with the assistance of the designated records coordinators of all affected Office/Departments.

In accordance with the requirements of the Public Records Act, the designated Department representatives must, to the extent reasonably practicable, assist members of the public in making focused and effective requests for records and information by (1) assisting the member of the public with identification of records and information that respond to the request, (2) describing the information technology and physical location in which the records exist, and (3) providing suggestions for overcoming any practical basis for denying the request.

San Jose does not maintain a centralized record keeping system, other

than certain documents routinely maintained by the City Clerk. The City does follow the Public Records Act and the Council Public Records Policy and makes available for inspection City records during normal business hours. It is important to point out that although some City offices (because of the nature of the work and/or the location of the office) are not as easily accessible to the public during regular business hours, they still comply with the Public Records Act and Council Policy.

Communications to the Mayor and City Council are maintained as public records in the Office of the City Clerk and are made available for inspection and/or copying. Correspondence to the Mayor/Council from the public or a City advisory body are filed, copied and distributed as the "Public Record" weekly to the Rules and Open Government Committee. Communications to the Mayor/Council regarding any item on a City Council agenda, current or upcoming, is filed, copied and distributed by the City Clerk. The original communication is filed with the appropriate agenda item and is referenced as a "document filed" in the Council minutes for easier identification.

The Office of the City Clerk does not typically maintain copies of any correspondence submitted to other advisory bodies of the Council, unless the Mayor/Council are copied. These records are maintained by the Office/Department assigned to support the various boards and commissions.

For Environmental Impact Reports (EIR), the Planning Division distributes every EIR to the Mayor and each Councilmember for their reference only, since they may have to vote on the item if it were to be appealed. A copy is also given to each Planning Commissioner, the Main library, and the local branch where the project is located. If the EIR is a Citywide and/or high profile project, each branch library will receive a copy. A copy is also maintained in the Planning Division for the public to review and is also posted on the City's web-site.

The City's Public Records Policy and Protocol follows the PRA and goes beyond the basic requirements when directed by Council (e.g. the Council Sunshine Referrals implemented Fall of 2006).

3. The Role of the City Attorney's Office

Each City department, board and commission is assigned a lawyer from the City Attorney's Office to represent it. When a department, board or commission receives a request under the Public Records Act, it may consult with its attorney to ensure that it responds within the appropriate time frame and produces the appropriate documents. Because department staff assigned to respond to records requests may change

from time to time, the departmental attorney also serves to ensure that the department responds consistently to all records requests. The City Attorney's Office provides guidance regarding records retention schedules and practices and, in conjunction with the City Manager's Office and the City Clerk's Office provides regular training to the department coordinators.

C. OVERVIEW OF KEY CONSIDERATIONS

1. The Purpose of the Exemptions
 - a. Privacy rights: A number of exemptions exist to protect the privacy of third parties. For example, victims and witnesses of crimes provide information about themselves to law enforcement personnel. This information is protected to prevent further victimization or retaliation. In addition, employees of the City have privacy rights in personal information related to their employment, including disciplinary proceedings.
 - b. Employee negotiations: An exemption exists to protect negotiations with represented and unrepresented employees. Release of records related to negotiations before their conclusion could be considered an unfair labor practice under State law or, at a minimum, lack of good faith in bargaining on the part of the City.
 - c. Deliberative process and preliminary drafts: Exemptions exist to ensure some privacy for public agencies – either in draft documents or in meetings. For example, interested parties – including those with unpopular views – should be able to meet with elected officials without worrying that the meetings will be disclosed. The idea is that officials should be judged for what they decide – not for what they considered before making up their minds.
 - d. Attorney-client privilege: An exemption exists to permit the City to confer with its attorneys about litigation without compromising the position of the City.
2. Clarity of the Ordinance: The recommended ordinance should be clear enough to advise members of the public and public bodies on the process and requirements of the ordinance and to hold staff accountable to fulfill the requirements of the ordinance.
3. Costs: Attaining funding for staff time associated with requests, public records infrastructure, and enforcement.

Attachment A

A Pocket Guide to the California Public Records Act
GOVT. CODE §§ 6250 - 6276.48

California Public Records Act

GOVT. CODE §§ 6250 - 6276.48

THE BASICS

The Public Records Act is designed to give the public access to information in possession of public agencies: "public records are open to inspection at all times during the office hours of the...agency and every person has a right to inspect any public record, except as . . . provided, [and to receive] an exact copy" of an identifiable record unless impracticable. (§ 6253). Specific exceptions to disclosure are listed in sections 6253.2, 6253.5, 6253.6, 6254, 6254.1-6254.22, 6255, 6267, 6268, 6276.02-6276.48; to ensure maximum access, they are read narrowly. The agency always bears the burden of justifying nondisclosure, and "any reasonably segregable portion . . . shall be available for inspection...after deletion of the portions which are exempt." (§ 6253(a))

WHO'S COVERED

- **All state and local agencies**, including: (1) any officer, bureau, or department.; (2) any "board, commission or agency" created by the agency (including advisory boards); and (3) nonprofit entities that are legislative bodies of a local agency. (§ 6252(a),(b)). Many state and regional agencies are required to have written public record policies. A list appears in § 6253.4.

WHO'S NOT COVERED

- Courts (except itemized statements of total expenditures and disbursement). (§§ 6252(a), 6261)
- The Legislature. (§ 6252) See Legislative Open Records Act, Govt. Code §§ 9070-9080.
- Private non-profit corporations and entities.
- Federal agencies. See Federal Freedom Of Information Act, 5 U.S.C. § 552.

ACCESS TIP ☞ Look to access laws (e.g. Legislative Open Records Act, IRS rules, court cases) that permit inspection and copying of records of agencies not subject to the Public Records Act. Many local jurisdictions also have "Sunshine" laws that grant greater rights of access to records.

WHAT'S COVERED

- "Records" include all communications related to public business "regardless of physical form or characteristics, including any writing, picture, sound, or symbol, whether paper, . . . , magnetic or other media." (§ 6252(e)) Electronic records are included, but software may be exempt. (§§ 6253.9(a),(g), 6254.9 (a),(d))

WHAT MUST HAPPEN

- **Access is immediate** and allowed at all times during business hours. (§ 6253(a)) Staff need not disrupt operations to allow immediate access, but a decision whether to grant access must be prompt. An agency may not adopt rules that limit the hours records are open for viewing and inspection. (§§ 6253(d); 6253.4(b))
- **The agency must provide assistance** by helping to identify records and information relevant to the request and suggesting ways to overcome any practical basis for denying access. (§ 6253.1)
- **An agency has 10 days to decide if copies will be provided.** In "unusual" cases (request is "voluminous," seeks records held off-site, OR requires consultation with other agencies), the agency may, upon written notice to the requesters, give itself an additional 14 days to respond. (§ 6253(c)) These time periods may not be used solely to delay access to the records. (§ 6253(d))
- **The agency may never make records available only in electronic form.** (§ 6253.9(e))
- **Access is always free.** Fees for "inspection" or "processing" are prohibited. (§ 6253)
- **Copy costs are limited to "statutory fees"** set by the Legislature (not by local ordinance) or the "direct cost of duplication", usually 10 to 25 cents per page. Charges for search, review or deletion are not allowed. (§ 6253(b); North County Parents v. D.O.E., 23 Cal.App.4th 144 (1994)) If a request for electronic records either (1) is for a record normally issued only periodically, or (2) requires data compilation, extraction, or programming, copying costs may include the cost of the programming. (§ 6253.9(a),(b))
- **The agency must justify the withholding of any record** by demonstrating that the record is exempt or that the public interest in confidentiality outweighs the public interest in disclosure. (§ 6255)

ACCESS TIP ☞ Always ask for both copies and access; after inspection you can reduce the copy request (and associated costs) to the materials you need.

REQUESTING PUBLIC RECORDS

- Plan your request; know what exemptions may apply.
- Ask informally before invoking the law. If necessary, use this guide to state your rights under the Act.
- Don't ask the agency to create a record or list.
- A written request is not required, but may help if your request is complex, or you anticipate trouble.
- Put date limits on any search.
- If the agency claims the records don't exist, ask what files were searched; offer any search clues you can.
- Limit pre-authorized costs (or ask for a cost waiver), and pay only copying charges.
- Demand a written response within 10 days.

IF YOUR REQUEST IS DENIED

- Keep a log of to whom you speak and the stated reason for the denial.
- Employ the following six-step DENIAL strategy:
 - D = Discretionary:** Exemptions are permissive, never mandatory. Ask the agency if it will waive the exemption and release the record.
 - E = Explanation:** Insist that the agency explain in a written denial why the exemption applies to the requested record.
 - N = Narrow Application:** The Act favors access. Exemptions must be narrowly construed.
 - I = Isolate:** Request the release of any non-exempt portions of the record.
 - A = Appeal:** State your rights, using this guide, and ask to speak to a higher agency official.
 - L = Lawsuit:** File suit to enforce your rights. If you win, the agency must pay your costs and legal fees. (§ 6259(d)); Belth v. Garamendi 232 Cal.App.3d 896 (1991).
- Write a news story or Letter to the Editor about the denial.
- Consult your supervisor or lawyer, or contact one of the groups listed on this brochure.

WHAT'S NOT COVERED

- Employees' private papers, unless they "relat[e] to the conduct of the public's business [and are] prepared, owned, used, or retained by the agency." (§ 6252(e))
- Computer software "developed by a state or local agency ... includ[ing] computer mapping systems, computer programs, and computer graphic systems." (§§ 6254.9(a),(b))
- Records not yet in existence: The PRA covers only records that already exist, and an agency cannot be required to create a record, list, or compilation. "Rolling requests" for future-generated records are not permitted.

RECORDS EXEMPT FROM DISCLOSURE

The Act exempts certain records from disclosure in whole or in part. This does not mean they are not public records or that disclosure is prohibited. An agency may withhold the records, but can allow greater access if it wishes. (§ 6253(e)).

However, "selective" or "favored" access is prohibited; once it is disclosed to one requester, the record is public for all. (§ 6254.5) Many categories of records are exempt, some by the Act itself, (§§ 6254(a)-(z)) and some by other laws (§§ 6275-6276.48). These include:

- **Attorney-Client discussions** are confidential, even if the agency is the client, but the agency (not the lawyer) may waive secrecy. (§§ 6254(k), 6254.25, 6276.04)
- Appointment calendars and applications, phone records, and other records which impair the **deliberative process** by revealing the thought process of government decision-makers may be withheld only if "the public interest served by not making the record[s] public clearly outweighs the public interest served by disclosure of the record[s]." (§ 6255; *Times Mirror v. Superior Ct.*, 53 Cal.3d 1325 (1991); *CFAC v. Superior Ct.*, 67 Cal.App.4th 159 (1998); *Rogers v. Superior Ct.*, 19 Cal.App.4th 469 (1993)) If the interest in secrecy does not clearly outweigh the interest in disclosure, the records must be disclosed, "whatever the incidental impact on the deliberative process." (*Times Mirror v. Superior Ct.*) The agency must explain, not merely state, why the public interest does not favor disclosure.

- **Preliminary drafts, notes and memos** may be withheld only if: (1) they are "not retained...in the ordinary course of business" and (2) "the public interest in withholding clearly outweighs the public interest in disclosure." Drafts are not exempted if: (1) staff normally keep copies; or (2) the report or document is final even if a decision is not. (§ 6254(a)) Where a draft contains both facts and recommendations, only the latter may be withheld. The facts must be disclosed. (*CBE v. CDFCA.*, 171 Cal.App.3d 704 (1985))
- **Home Addresses** in DMV, voter registration, gun license, public housing, local agency utility and public employee records are exempt, as are addresses of certain crime victims. (§§ 6254(f),(u), 6254.1, 6254.3, 6254.4, 6254.16, 6254.21)
- **Records concerning agency litigation** are exempt, but only until the claim is resolved or settled. The complaint, claim, or records filed in court, records that pre-date the suit (e.g., reports about projects that eventually end in litigation), and settlement records are public. (§§ 6254(b), 6254.25; *Register Div. of Freedom Newspapers, Inc. v. County of Orange*, 158 Cal. App. 3d 893 (1984))
- **Personnel, medical and similar files** are exempt only if disclosure would reveal intimate, private details. (§ 6254(c)) Employment contracts are not exempt. (§ 6254.8)
- **Police incident reports, rap sheets and arrest records** are exempt (Penal Code §§ 11075, 11105, 11105.1), but information in the "police blotter" (time and circumstances of calls to police; name and details of arrests, warrants, charges, hearing dates, etc.) must be disclosed unless disclosure would endanger an investigation or the life of an investigator. Investigative files may be withheld, even after an investigation is over. (Gov. Code § 6254(f); *Williams v. Superior Ct.*, 5 Cal. 4th 337 (1993); *County of L.A. v. Superior Ct.*, 18 Cal. App. 4th 588 (1994). Identifying data in police personnel files and misconduct complaints are exempt, but disclosure may be obtained using special procedures under Evidence Code section 1043.
- **Financial data** submitted for licenses, certificates, or permits, or given in confidence to agencies that oversee insurance, securities, or banking firms; **tax, welfare, and family/adoption/birth** records are all exempt. (§§ 6254(d),(k),(l), 6276)

A POCKET GUIDE TO THE CALIFORNIA PUBLIC RECORDS ACT

A SERVICE OF:
**THE FIRST AMENDMENT PROJECT
SOCIETY OF PROFESSIONAL
JOURNALISTS (Nor. Cal.)**

HOW TO USE THIS GUIDE

This pocket guide is intended to be a quick reference and provide general information to journalists and citizens. It addresses some common public records problems, but does not substitute for research or consultation with a lawyer on detailed questions. This guide current as of December 3, 2003.

FOR MORE INFORMATION OR HELP:

FIRST AMENDMENT PROJECT.....510/208-7744
www.thefirstamendment.org

California First Amendment Coalition.....415/460-5060
www.cfac.org

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Attachment B

City of San Jose Public Records Policy and Protocol

City of San José, California

COUNCIL POLICY

TITLE: PUBLIC RECORDS POLICY AND PROTOCOL	PAGE 1 of 7	POLICY NUMBER
	EFFECTIVE DATE	REVISED DATE

APPROVED BY

POLICY STATEMENT

The public’s right to access information concerning the conduct of the people’s business is a fundamental and necessary right. A record shall not be withheld from disclosure unless it is exempt under applicable laws, or the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record. The California Public Records Act permits local agencies to adopt regulations stating the procedures to be followed when making their records available to the public. The San José City Council desires to establish a formal written policy affirming the public’s right to access City of San José records and to set forth the procedures by which such records will be made available to the public. The City Council is mindful of the constitutional right of privacy accorded to individuals and it is the intent of the City Council to promulgate a policy that strikes an appropriate balance between the objectives of open government and the individual’s right of privacy.

PURPOSE

The purpose of this policy is to affirm the public’s right to access City records and to set forth the procedures that will facilitate accessibility of information to members of the public.

ACCESSING CITY RECORDS

Records Available for Inspection and Copying

Records available for inspection and copying include any writing containing information relating to the conduct of the public’s business that is prepared, owned, used, or retained by the City, regardless of the physical form and characteristics. The records do not have to be written but may be in another format that contains information such as computer tape or disc or video or audio recording.

“Writing” includes any handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation such as letters, words, pictures, sounds, or symbols, as well as all papers, maps, magnetic or paper tapes, photographic films and prints, and electronic mail.

Locating and Identifying Records

Public records are open to inspection at all times during regular City business hours. The City does not maintain a centralized record keeping system, other than certain documents routinely maintained by the Office of the City Clerk. Each of the City’s individual departments maintains and has custody of records and information relating to the responsibilities and work performed by the particular department.

Information identifying the City's Departments and Department contacts is available on the City's website at www.sanjoseca.gov. Information about City Departments and contacts may also be obtained by contacting the City's Informational Call Center located at City Hall. The telephone number for reaching the Call Center is (408) 535-3500, and the TDD telephone for the hearing impaired is (408) 294-9337.

Each Department shall designate a person or persons, who will be responsible for responding to requests for records and coordinating the response with other City Departments, when appropriate. The Department representative shall also, to the extent reasonably practicable, assist the public in making focused and effective requests for records and information. In order to accomplish this the representative shall: (1) assist the member of the public with identification of records and information that are responsive to the request or the purpose of the request, if known; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying the request.

Making a Request for Records

There is no specific form that must be used to request records, nor is there any language that must be used when making a request. Requests may be made orally or in writing; either in person, through the mail, via e-mail or over the telephone. The request, however, should contain a reasonable description of the desired records in order to expedite processing of the request.

Form of Records Provided

Records shall be made available in their original form or by a true and correct copy. Audio, photographic and computer data, or any other such records, shall be exact replicas unless the Department determines it is impracticable to provide exact replicas. Any reasonably segregable portion of a record shall be provided to the public after deletion of portions that are deemed exempt from disclosure.

Time for Response

Upon receipt of a written or oral request for records, the City shall make the records promptly available to the requestor. In cases where the records are not readily identifiable or accessible, or additional time is needed to determine whether the request in whole or in part seeks copies of disclosable records, the City will have ten (10) calendar days to provide its determination. The ten (10) day time period shall be calculated from the date the request is received.

In unusual circumstances, the City may extend its time to respond by an additional fourteen (14) calendar days. Should this occur, the City will inform the requestor in writing of the extension within the initial ten (10) day period, setting forth the reasons for the extension, along with the estimated date of the City's further response. Unusual circumstances permitting the extension of time are limited to: (1) the need to search for and collect the requested records from facilities separate from the office processing the request; (2) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that have been asked for in a single request; (3) the need for consultation with another department or another agency that has a substantial interest in the response to the request; and/or (4) the need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

If a written request for information is denied in whole or in part, the denial shall be in writing and shall contain the explicit reasons for denial of access to the subject records, as well as the names and titles or positions of each person responsible for the denial.

Fees and Charges

In most situations, the City will not charge any fees to cover the time and costs incurred in searching for, locating or collecting records. The City, however, may charge for the actual costs of duplicating paper copies of records and postage, consistent with the amounts set forth in City's Schedule of Fees and Charges. The City may also charge for duplication costs in another medium in accordance with the amounts set forth in the Schedule of Fees and Charges (e.g. copying video or cassette tapes).

Requestors of electronic records shall pay for production costs, including the cost to construct the record and the cost of programming and computer services necessary to produce the copy if the request would require the production of a record that is otherwise only produced at regularly scheduled intervals, or the request would require data compilation, extraction, or programming to produce the record. However, the City will not charge for access to data that is readily accessible without significant cost to the City.

Department Procedures

Each City Department, with the assistance of the City Attorney's Office, shall establish procedures to be followed when making its records available for public inspection consistent with the provisions set forth in Attachment A. If any question exists as to whether any record, or portion of any record, is exempt from disclosure, it is the responsibility of the head of the Department, or his or her designee, to contact the Office of the City Attorney promptly within the time frame for responding to a public records request for advice.

Attachment A

CITY OF SAN JOSE PUBLIC RECORDS PROCEDURE

Department Representatives

_____ Each Department shall designate a person or persons, who will be responsible for responding to requests for records and coordinating the response with other City Departments, when appropriate.

_____ Departments that have more than one division within the Department, shall assign a person or persons who will be responsible for coordinating and responding to requests for records and information that overlap different divisions within the Department.

Department Coordination

_____ If a request seeks information from more than one department, the request shall be forwarded to

the designated representative in the City Manager's Office and the representative of all other interested departments. The City Manager's representative will coordinate and respond to the request with the assistance of each of the Department representatives.

_____ If a request for records is directed to a department that does not maintain or have custody of the records, then the representative shall promptly attempt to identify the appropriate department and forward the request to the responsible department for preparation of a response. In the event a request is forwarded to another department for a response, the requestor shall be given notice of the referral to another department and contact information for the Department who will be preparing the response.

Coordination with the City Attorney's Office

Requests that are related to pending or potential litigation shall be coordinated with the City Attorney's Office. Questions regarding the Public Records Act or any documents that may not be subject to disclosure shall promptly be forwarded to the City Attorney's Office for review.

Steps for Responding to Requests for Records

_____ Upon receiving a request for records, whether orally or in writing, the Department representative shall promptly respond to the request. For example, if a request is made in person at the City Clerk's Office for a copy of a City Council agenda maintained at the City Clerk's Office, the requested agenda should be made available to the requestor at the time of the request.

_____ If a particular request requires research as to the existence of the requested record and/or its location, then the Department representative shall promptly begin researching the request and shall immediately note his or her calendar (e.g. Outlook), with the last date to respond to the request. This date shall not exceed ten (10) calendar days from the date the request is received.

_____ In unusual circumstances, the City may extend its time to respond by an additional fourteen (14) calendar days. The circumstances permitting an extension of time are limited to:

- (1) the need to search for and collect the requested records from facilities separate from the office processing the request;
- (2) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that have been asked for in a single request;
- (3) the need for consultation with another department or another agency that has a substantial interest in the response to the request; and/or
- (4) the need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

Should one or more of these circumstances arise, the Department representative will inform the requestor in writing of the extension within the initial ten (10) day period, setting forth the reasons for the extension, along with the expected date of the City's further response. Any questions about extending the initial ten (10) day time to respond to requests should be directed to the City Attorney's Office.

_____ Records shall be available for review and inspection during regular City business hours.

_____ If a request for records seeks the production of records or documents that are not in existence at

the time the request is made, the City is not obligated to create a document in order to respond to the request.

Common Exemptions

There are certain categories of documents that are generally not subject to disclosure. These include, but are not limited to: (1) preliminary drafts of certain documents that are not retained by the City in the ordinary course of business; (2) records related to pending litigation; (3) attorney-client communications; (4) personnel records, medical information, or other similar records the disclosure of which would constitute an unwarranted invasion of personal privacy; (5) corporate financial and proprietary information, including trade secrets; and (6) records protected by State or Federal law.

If the Department (after consultation with the City Attorney's Office when appropriate), determines that the records sought in a written request for records are not subject to disclosure either in whole or in part, then the Department shall advise the requestor in writing that the records will not be made available and include the reasons why access is being denied, as well as the names and titles or positions of each person responsible for the denial.

Responding to Requests for Particular Documents

The following procedures shall apply when responding to requests for these particular categories of documents:

Disclosure of Preliminary Drafts

Preliminary drafts of documents kept in the ordinary course of business, including drafts of agreements, which are kept and preserved after final action has been taken, shall be disclosed if requested.

Disclosure of Litigation Materials

1. When litigation in which the City is a party is finally adjudicated or otherwise settled, records of communications between the City and the adverse party in the litigation shall be subject to disclosure including the text and terms of any settlement agreement between the parties.
2. Such disclosure shall not apply to records that are otherwise privileged under federal or state law, such as attorney-client communications, or to records sealed by the court or where disclosure is otherwise limited by the court.

Disclosure of Information Relating to Contracts, Bids, and Proposals

1. Records of contractors' bids shall be available for inspection immediately following the opening of bids.
2. Responses to Requests for Proposals or Requests for Qualifications/Quotations and similar submittals shall be regarded as public records and are available for inspection after City staff's recommendation has been made public, unless there are elements in the proposal which are defined by the proposer as business or trade secrets and plainly marked as "Confidential," "Trade Secret," or "Proprietary." Although trade secret information may be exempt from disclosure, the City typically is not in a position to establish whether the information that a proposer has submitted is a trade secret. If a request is made for information marked "Confidential," "Trade Secret," or "Proprietary", the City will provide the proposer who submitted the information with reasonable notice to allow the proposer to seek

protection from disclosure by a court or government agency of competent jurisdiction.

3. When an individual, firm or organization is awarded a contract, information including financial information which was submitted to the City during the bid or proposal process from all proposers will be subject to disclosure unless otherwise exempt.

Budgetary Information

Budgetary information including bills or records of payments, which are submitted to the City Council or other body having budgetary authority, shall be subject to disclosure unless the record is confidential or privileged under State or Federal law.

Personal Information

Requests for records and documents containing personal information such as social security numbers, home addresses, home telephone numbers, financial matters, and medical or employment history, should be reviewed on a case by case with the City Attorney's Office. The City may respond to requests for personal information in one or more of the following ways: 1) delete or redact those portions of the records that include personal information and make the remaining portion of the record available for inspection if the remaining portion of the record is not otherwise exempt from disclosure; 2) notify the party whose personal information is being sought and provide the party with the opportunity to initiate legal proceedings or other appropriate process to prevent the release of such information; 3) seek a judicial determination as to whether or not the requested personal information should be disclosed; or 4) disclose the information where permitted, allowed or compelled to do so.

Complaints and Complaint Information

Information regarding complaints shall be made available. However, specific information about complainants shall be redacted from any record furnished if necessary in order to protect the privacy rights and safety of individuals making complaints and to protect an individual's right to petition government for redress of grievances.

Electronic Mail

E-mail shall be treated the same as other written documents. If the e-mail is kept in the ordinary course of business, it is a public record unless it falls within some exception to disclosure under the Public Records Act. Additional information regarding the storage and use of e-mail in the City may also be found in Section 3.01 of the City's policy manual entitled "Use of E-Mail, Internet Services, and other Electronic Media."

Records Retention

This procedure does not obligate City departments to retain documents beyond the period of time designated for the department in the City's record retention policy. In the event a request for records is received prior to its destruction under the City's record retention policy, the requested records will be provided.
