



PROCEDURE 02.01.03

RESPONDING TO PUBLIC RECORDS (SUNSHINE) REQUESTS

A. PURPOSE

This section establishes guidelines for acknowledging, processing, and responding to public records requests.

B. POLICY

The department should acknowledge, process, and respond to public records requests in a timely manner and in accordance with the Sunshine Ordinance, Chapter 67 of the San Francisco Administrative Code, and with the Brown Act, Sections 6250 to 6270 of the California Government Code.

C. DISCUSSION

1. Chapter 67 of the San Francisco Administrative Code, also known as the San Francisco Sunshine Ordinance of 1999, compels departments to provide public information and public records, upon request, in a timely manner.
2. Members of the public could request information and records or documents through a variety of methods. Those methods would include written letter, fax or email, and any oral method such as in-person or via telephone. There are also no time constraints on when the public could make such requests; no one needs an appointment to make a request.
3. Although any member of the department could receive and process such public records requests, Chapter 67 states that the department must designate a custodian of public records to act as the official department representative on such matters and assist requesters with their requests.
4. Chapter 67 also gives response deadlines for departments, describes what information and documents should be made available, and provides procedures for the public to appeal any public records request decisions made by the departments.

D. PROCEDURES

1. Types of public records requests

a. Regular public record request

Typically, the requester will use the term “public records request” when making a public records request. Otherwise, the department should treat the request as a normal request. Requests could be made orally or in writing.

For regular public records requests, the department is required to respond to the requester with the responsive information or documents as soon as possible, but no later than 10 calendar days of receipt of the request.

b. Immediate disclosure request

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If the requester uses the term “immediate disclosure” when making a public records request, the request becomes a more urgent one with respect to the department’s response time. For immediate disclosure requests, the department is required to respond to the requester with the responsive information or documents by the end of the next business day following the receipt of the request.

2. Receiving public records requests

a. Receipt during normal business or office hours

Public records request received during normal business or office hours would be considered received on that day.

If any letter, email or fax arrives at the end of the business day and is not opened or read until the next business day, the department could consider the public records request as being received on the day that it was opened or read.

b. Receipt during non-business hours, weekends and holidays

Public records requests received during non-business hours, weekends, and holidays would be considered received on the day that the department opens, reads or listens to the request. This would include any letter, email, fax and voice-mail that arrives during non-business hours. Typically, such letters, emails, faxes and voice-mails should be opened, read or heard on the next business day.

c. Recipient of public records request

Any department employee could receive public records request from any member of the public. However, if the employee prefers, the employee could refer the requester to the department’s custodian of public records. When doing so, the employee, as a courtesy, should alert the custodian of public records of the referral.

If the department employee accepts the request, the employee should acknowledge, process and respond to the request. The employee should also notify and supply copies of the request, acknowledgment, and all responsive documents to the custodian of public records.

3. Acknowledging public records requests

a. Acknowledge receipt

The department should acknowledge receiving public records requests by the end of the next business day. A written acknowledgment should be made, regardless of how the request was received.

b. Content of written acknowledgement

The acknowledgment should inform the requester of the day the department received the public records request and when the responsive information and documents might be made available to him or her.

The acknowledgement should also include reference to the requested information or material.

The acknowledgment should also contain information regarding duplication and postage costs, if the requester opts to have hard copies of any documents that are made available to him or her.

Section 67.28 of the San Francisco Administrative Code allows departments to charge for copies and delivery service. Departments are not allowed to charge for handling, researching, and copies made for internal department-use during public records requests.

c. Method of acknowledgment

Written acknowledgments should be relayed to the requester in the same method as the request was received. For example, if the requester sent a letter via US Mail, the acknowledgement should be in a form of a letter sent via US Mail.

In some cases, the requester will send multiple copies through various methods. If so, multiple written acknowledgments should be sent. For example, if the requester sent a fax and an email, the acknowledgment should be in a form of a fax and an email.

For requests received orally, the department should attempt to give the requester a written acknowledgement. This is especially important for oral requests because this would be the first written documentation confirming what is being requested. If the written acknowledgement contains mistakes, the requester could then contact us with corrections. The department should ask for a fax number, mailing address, or email address where a written acknowledgment could be sent.

4. Processing public records requests

a. Routing to appropriate bureau for response

The recipient of the public records request, whether it is the custodian of public records or not, should then determine which bureau or bureaus have the responsive documents.

The request should then be forwarded to those bureaus for research. A deadline for producing and compiling the requested information or documents should be included. The deadline should also take into consideration the time needed for redacting documents. Typically, this deadline should be a few days prior to the deadline for the department to respond to the requester.

b. Finding responsive documents

The department should research and produce the responsive documents in a timely manner. However, the department does not need to reproduce or recreate any responsive documents that were missing, lost, destroyed, never produced, or purged per our Records Retention Policy (see Procedure 02.01.05).

If the department knows that there are no responsive documents or, if after researching, does not find any responsive documents, the department should inform the requester so.

If the department knows that another city department or agency may possess responsive documents, the department is not obligated to seek those documents. Instead, the department should refer the requester to the other department or agency for them.

c. Redacting documents

When the responsive documents have been compiled, the recipient of the public records request, the custodian of public records, or the bureau that did the research should then review and redact all personal information from those documents.

Section 6254 of the California Government Code stipulates that personal information, such as personal phone numbers and email addresses, should not be disclosed. Information in employee's personnel and medical files should not be disclosed.

Some types of documents, such as records pertaining to pending litigation, should also not be disclosed. Some documents, such as contractors' bids or responses to request for proposals, may not be disclosed until after negotiations are completed and contracts are awarded because disclosing such information may give advantages to or harm some contractors. Some preliminary drafts and notes could be also withheld.

For a description of items that should be withheld or not withheld, please refer to San Francisco Administrative Code, Section 67.24, and California Government Code, Section 6254.

5. Concluding public records requests

a. Documents ready for viewing

After the responsive documents are collected and redacted, the department should contact the requester to make arrangements for him or her to view the redacted documents. Such contact should be made in writing through the same method as the department did when acknowledging receipt of the request. A sentence stating that the department has concluded its research should also be included.

In addition to a written response, the department could also contact the requester and make arrangements for document viewing via telephone.

b. Viewing of documents

When the requester arrives, a department representative should accompany the requester during the viewing. The department representative should help the requester make copies, if needed, and ensure all documents are returned.

In lieu of arranging for the requester to view documents, the department could opt to send all responsive documents to the requester via email or fax.

c. Format of documents

The law does not specify a format for the responsive information that departments provide to requesters. Therefore, the department should exercise good judgment and provide the requested records in a format of its choice.

For emailing, the standard practice is to convert all documents into pdf format to prevent any misuse or alterations to the originals. However, the department could opt to transmit the documents in its original format if alterations are not a concern.

c. Documents that could be withheld

Almost all items that the department and department employees produce could be disclosed to the public upon requests. However there are exceptions.

For a general rule of thumb, drafts of any kind do not need to be disclosed. This includes drafts of letters, memos and reports. However, if there are final versions of these, the final versions must be disclosed.

Drafts of contract documents or requests for proposals (RFPs) and draft versions of negotiated agreements should not be disclosed because disclosure of such items could give unfair advantages to certain parties and could also harm public interest, such as optimizing costs.

Material used for current litigation and personnel records that would invade personal privacy are also not to be disclosed.

For a list of documents that should and should not be disclosed, please see Section 67.24 of the San Francisco Administrative Code and Section 6254 of the California Government Code.

6. Costs associated with duplication or copies of documents

a. Copies

The requester could request for copies of any documents made available to him or her. While there is no time limit on how quickly copies need to be made and presented, the department should handle this within a reasonable amount of time.

The department, however, would need to keep track of duplication costs and bill the requester for them. San Francisco Administrative Code, Section 67.28, allows department to charge up to \$0.10 per photocopy on one sheet of paper. That section also allows the department to charge for duplication on other types of medium, such as cassette tapes, compact disks, etc.

The department is not allowed to charge for documents sent via email and via fax because the recipient would bear the cost and responsibility for printing those documents.

b. Postage

San Francisco Administrative Code, Section 67.28, allows departments to charge the requester for the cost of mailing or delivering – through an external messenger service – of copies.

7. Extension of time for responding to public records requests

a. One 14-day extension

The San Francisco Administrative Code, Section 67.25(b), and the California Government Code, Section 6253(c), allow departments to invoke a one-time 14-calendar-day extension for responding if the nature of the information requested is voluminous, if the department needs to search through a voluminous amount of data, if the requested material is in a remote storage facility, and if the department needs to consult with another interested department.

Although the San Francisco Administrative Code, Section 67.25(b), mentions that a 10-day extension is allowed and the California Government Code, Section 6253(c), mentions that a 14-day extension is allowed, the City Attorney's October 18, 2005 letter to the Sunshine Ordinance Task Force clarifies that the extension allowed is actually 14 calendar days.

The department should notify the requester of the extension in writing, just as it did when acknowledging receipt. This notification needs to be made within the initial department's response period.

b. Material on a rolling basis

If the amount of responsive material is voluminous or if the department needs to search through a voluminous amount of material, the department could supply documents to the requester on a rolling basis.

The department does not need to wait until all responsive material is collected before responding to the requester.

8. Exceptions

a. Director's Calendar

The public could ask for the director's calendar through the public records request process. Per Section 67.29-5 of the San Francisco Administrative Code, departments are required to make their directors' calendars available to any requester within three business days subsequent to the calendar entry date requested, instead of the normal 10-day deadline for regular public records requests.

b. Contractor's Certified Payroll Records

Requests for contractor's certified payroll records should be handled in the same manner as any public records requests. The only exception is that costs for researching and copying documents are different.

As allowed by Title 8, California Administrative Code Section 16402, the department could charge \$1.00 for the first page of the payroll record and \$0.25 for each page thereafter, plus \$10.00 for handling.

9. Other

a. Public Records Request Log

Per San Francisco Administration Code Section 67.21(h), the department custodian of records must keep and prepare an annual tally and report of every petition or request received. This report must identify each request and the department's response.

This log should also list the dates of request receipt, dates of department acknowledgement, due dates, and response dates.

The custodian of records should also maintain all communications, including intra-department communication, related to each request. Redacted responsive documents released to the requester should also accompany these records.

If possible, all records should be converted into electronic format and stored within the department's computer network data storage facility.

b. Release of Oral Public Information

The department must also designate a person or persons knowledgeable about the affairs of the department to provide oral information to the public about the department's operations, plans, policies and positions. However, this person is not required to spend more than fifteen minutes to obtain the information responsive to the inquiry. See Section 67.22 of the San Francisco Administrative Code for more information.

This knowledgeable person could also be the custodian of records.

c. City Attorney's Office

The City Attorney's Office provides legal advice, including advice on public records requests, to the department. The City Attorney's Office typically assigns a Deputy City Attorney to advise the department's custodian of records.

It is not necessary to consult the Deputy City Attorney on all public records requests. However, the Deputy City Attorney should be alerted of any unusual ones.

Some law firms now use the public records request process for documents, instead of issuing a subpoena. Therefore, the Deputy City Attorney should be alerted of any requests for material that appears to be used on a litigation case.

E. FAILURE TO COMPLY

1. Sunshine Ordinance Task Force

Any requester believing that the department was not responsive to his or her request could file a complaint with the Sunshine Ordinance Task Force (SOTF). Non-responsive reasons include tardiness in responding and failure to disclose requested documents or information.

Upon receipt of the requester's complaint, the SOTF would notify the department and schedule a hearing of the complaint at a SOTF meeting. The department's custodian of records would typically be summoned to appear and to testify for the department.

The SOTF would then render a decision after the hearing. If the SOTF finds in favor of the requester, the SOTF would compel the department to respond and monitor the department's response accordingly.

2. Ethics Commission, District Attorney, Attorney General

If the SOTF determined that the department did not respond as instructed, the SOTF could refer the matter to the Ethics Commission, the Board of Supervisors, the District Attorney or the California Attorney General for further enforcement.

RECOMMENDED:

X 

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APPROVED:

X 

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NOTE:
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