

City and County of San Francisco



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Public Works Procedures Manual

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Volume	02 Administrative
Chapter	02-01-0 General Administration
Procedure Number	02-01-03 Responding-to-Public-Records-(Sunshine)-Requests
Procedure Revision Number	REV 05
Responsible Manager	<input type="checkbox"/> Steinberg, David (DPW)
Purpose	This section establishes guidelines for acknowledging, processing and responding to public records requests.
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.
Discussion	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. Members of the public can request information and records or documents through a variety of methods. Those methods include written letter, online submission through NextRequest, fax or email, and any oral method such as in-person or via telephone. There are also no time constraints on when the public can make such requests; no appointment is necessary to make a request. Although any member of the department may receive 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. 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.
Procedure	<p>1. Types of public records requests</p> <p>a. <u>Standard public record request</u>. Typically, the requester will use the term "public records request" when making a public records request. Even if the term is not used, the department should treat a request as a public records request. Requests can be made orally or in writing.</p> <p>For standard 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 after receipt of the request. If the 10th calendar day falls on a weekend or holiday, the response is due on the next business day following the 10th day.</p> <p>b. <u>Immediate disclosure request</u>. 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. The purpose of the immediate disclosure request is to expedite the City's response to a simple, routine or otherwise readily answerable request. For more extensive or demanding requests, the maximum deadlines for responding to a request apply. The requester's designation of a request as an immediate disclosure request does not automatically make it so. A department may adhere to the time deadlines governing standard requests if the extensive or demanding nature of the request would impose an undue burden on the department to respond immediately. The department should inform the requester if it intends to follow the standard request deadlines for a request that was submitted as an immediate disclosure request.</p> <p>2. Receiving public records requests</p> <p>a. <u>Receipt during normal business or office hours</u>. A public records request received during normal business or office hours is considered received on that day.</p> <p>b. <u>Receipt during non-business hours, weekends and holidays</u>. Public records requests received during non-business hours, weekends and holidays are considered received on the day that the department opens, reads or listens to the request. This would include any letter, email, fax or voicemail that arrives during non-business hours. Typically, such letters, emails, faxes and voicemails should be opened, read or heard on the next business day.</p> <p>c. <u>Recipient of public records request</u>. Any department employee may receive public records request from a member of the public. The employee should forward the request to the department's custodian of records and inform the requester of the referral.</p> <p>In limited circumstances, and when authorized to do so, department employees may accept and respond to requests. 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.</p> <p>d. Department employees should assist members of the public in identifying the types of records available and in making requests. For example, the departmental website should include information on making public records requests.</p> <p>e. If a request is made by a member of the media, the person answering and responding to the request should notify the department's Office of Communications and Public Affairs.</p> <p>3. Acknowledging public records requests</p> <p>a. <u>Acknowledge receipt</u>. 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.</p>

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.

The acknowledgement should reference 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 departmental 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 U.S. mail, the acknowledgement should be in the form of a letter sent via U.S. mail. However, if the requester includes an email address in a request that arrives in a different format (ie, mail, fax), acknowledgment by email is acceptable.

In some cases, the requester will send multiple copies through various methods. If so, only one written acknowledgement is required.

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 is then able to contact the department with corrections. The department should ask for a fax number, mailing address or email address where a written acknowledgement can be sent.

e. Posting publicly. Most records requests are submitted online using the online portal NextRequest. Requests received by email, postal mail, fax, orally or other methods will be entered into NextRequest or any subsequent online request portal utilized by the department. These requests should be acknowledged as detailed in Section 3c along with information explaining how to access the request online. Further communications with the requester should be done through NextRequest.

4. Processing public records requests

a. Routing to appropriate bureau for response. The person responding to a public records request should determine which bureau or bureaus have the responsive documents. If that person is not the custodian, s/he must inform the custodian of records.

The request should then be forwarded to the bureau(s) 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 following Procedure 02-01-05 (Records Retention and Destruction Policy).

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 of this fact.

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 must refer the requester to the other department or agency.

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 appropriate 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. Section 6254(c) of the California Government Code states that information in employee personnel, medical or similar files should not be disclosed if the disclosure would "constitute an unwarranted invasion of personal privacy." All personnel records are not automatically exempt, and many portions of these records are subject to disclosure.

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 may be also withheld.

Most documents produced by City employees are considered public records and are subject to disclosure as public records. This includes communications relating to the City's business that a public employee or official sends or receives on personal electronic devices such as cell phones and personal computers. For a description of items that should be withheld or not withheld, refer to San Francisco Administrative Code, Section 67.24, and California Government Code, Section 6254. Additional guidance is available from the City Attorney's Office at <https://www.sfcityattorney.org/good-government/good-government-guide>.

5. Concluding public records requests

a. Producing records. After the responsive documents are collected and (if necessary) redacted, they should be released to the requester via email or other electronic method.

b. Physical inspection of documents. Requesters may ask to physically inspect the responsive records. In these cases, 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 can also contact the requester via telephone and make arrangements for document viewing. 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.

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 can opt to transmit the documents in the original format if alterations are not a concern. If the requester specifies a specific format, records should be delivered in that format unless security concerns prevent it. Outlook email files should not be sent in their original format due to security concerns.

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

Drafts of contract documents or requests for proposals (RFPs) and draft versions of negotiated agreements may 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 may not be disclosed.

For a list of documents that should and should not be disclosed, see Section 67.24 of the San Francisco Administrative Code and Section 6254 of the California Government Code. Additional guidance is available from the City Attorney's Office at <https://www.sfcityattorney.org/good-government/good-government-guide>.

6. Costs associated with duplication or copies of documents

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

The department, however, needs 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 (or \$0.20 if printed on two sides). That section also allows the department to charge for duplication on other types of media, such as compact discs and flash drives. An invoice should be sent to the requester and payment should be received before documents are delivered.

The department is not allowed to charge for documents sent via email or via fax.

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 – the copies.

7. Extension of time for responding

a. One 14-day extension. The California Government Code, Section 6253(c), allows departments to invoke a one-time 14-calendar-day extension for responding to a standard request 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, or if the department needs to consult with another interested department.

San Francisco Administrative Code, Section 67.25(b) allows departments to invoke a one-time 14-calendar-day extension for responding to an immediate disclosure request if the nature of the information requested is voluminous, if the requested material is in a remote storage facility, or if the department needs to consult with another 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 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 should supply documents to the requester on a rolling basis. The department should not wait until all responsive material is collected before responding to the requester. Records must be produced on a rolling basis if the requester asks.

8. Non-standard deadlines

a. Director's calendar. The public can 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 standard public records requests.

b. Description of records. The Sunshine Ordinance allows a person to ask a department for information regarding the existence, quantity, form and nature of records relating to a particular subject. When requested to do so, the department must respond in writing within seven days. The ordinance does not provide for any time extension to comply with such a request.

9. Other

a. Public records request log. 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, date received and response date.

The custodian of records should also maintain all communications, including intra-department communication, related to each request as specified in Procedure 02-01-05 (Records Retention and Destruction Policy). 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 15 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 may 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. When the department receives a request for public records for matters that are the subject of litigation hold or involving a lawsuit against the City, the City Attorney's Office must be notified so it may review the materials, redact protected information and coordinate the production of any response to such a request.

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 or significant ones.

10. Failure to comply

a. Sunshine Ordinance Task Force. Any requester believing that the department was not responsive to his or her request may 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 will notify the department and schedule a hearing of the complaint at a SOTF meeting. The department's custodian of records will typically be summoned to appear and to testify for the department.

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

b. Ethics Commission, district attorney, attorney general. If the SOTF determines that the department did not respond as instructed, the SOTF can refer the matter to the Ethics Commission, the Board of Supervisors, the district attorney or the California attorney general for further enforcement.

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Notes

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