

OTAY WATER DISTRICT
BOARD OF DIRECTORS POLICY

Subject	Policy Number	Date Adopted	Date Revised
RECORDS POLICY AND PROCEDURES - ACCESSIBILITY	05-B	2/3/10	

Purpose

To set forth the procedures that will facilitate the process for responding to requests under the California Public Records Act ("CPRA").

Policy

The CPRA permits local agencies to adopt regulations stating the procedures to be followed when making their records available to the public. The Otay Water District's Board of Directors desires to set forth the procedures by which such records will be made available to the public. The Board is mindful of the constitutional right of privacy accorded to individuals and it is the intent of the Board to promulgate a policy that strikes an appropriate balance between the objectives of open government and the individual's right of privacy.

Procedures

Records Available for Inspection and Copying

Except for records exempt from disclosure by express provisions of law, 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 District, 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, 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.

Making a Request for Records

There is no specific form that must be used to request records. Requests may be made orally or in writing and may be delivered in person, through the mail, via e-mail or via facsimile. The request must contain a reasonable description of the desired records. When an oral request is received, the District may request that the public records request be confirmed in writing. The District may also follow-up verbally or in writing to clarify or eliminate any confusion concerning a request. Requests must be submitted to the District Secretary.

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Locating and Identifying Records

Public records are open to inspection at all times during regular District business hours. The District Secretary shall be responsible for responding to records requests and coordinating with the various departments within the District to compile documents and information responsive to such requests.

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 District is not obligated to create a document in order to respond to the request.

Form of Records Provided

Records will 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 District 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.

Common Exemptions

Certain categories of documents 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 District 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.

Time for Response

Upon receipt of a request for records, the District shall make the records promptly available to the requestor. When a copy of a record is requested, the District shall determine within ten (10) calendar days whether to comply with the request, and shall promptly inform the requestor of the District's decision and reasons therefor.

In unusual circumstances, as defined in the CPRA, the initial ten (10) calendar day period to make a determination may be extended for up to an additional fourteen (14) calendar days. If so, the District will inform the requestor of the extension, in writing,

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within the initial ten (10) day period, setting forth the reasons for the extension, along with the estimated date of the District's further response.

If a written request for information is denied in whole or in part, the denial shall be in writing and shall contain the reasons for denial of access to the subject records.

Fees and Charges

The District charges for the direct costs of duplicating records (in paper, CDs, audio cassettes, tape or other appropriate medium) and for the direct cost of postage and other delivery methods as set forth on Appendix A to the District's Code of Ordinance.

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 response to the request requires the immediate production of a record that is otherwise only produced at regularly scheduled intervals, or if data compilation, extraction, or programming is required to produce the requested record. However, the District will not charge for access to electronic data that is accessible in its existing form (including PDF copies of agenda items that are provided in the form previously made available on the District's website) and that does not require staff to locate, identify or extract data or to incur other costs to the District.

Responding to Requests for Particular Documents

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

Disclosure of Litigation Materials

1. When litigation in which the District is a party is finally adjudicated or otherwise settled, records of communications between the District 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.

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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, Qualifications or Quotations and similar submittals shall be regarded as public records and are available for inspection after District 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 District 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 District 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 District 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 District's Board 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 District's General Counsel. The District 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;

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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 CPRA.