

CONTRA COSTA COUNTY
Office of the County Administrator
ADMINISTRATIVE BULLETIN

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SUBJECT: Public Access to County Records

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The purpose of this bulletin is to inform County departments about their legal responsibilities under the California Public Records Act [Gov. Code, §§ 6250 et seq.] and the County’s Better Government Ordinance [Ord. Code, §§ 25-4.2 et seq.] with regard to requests for inspection of or copies of County records.

The California Public Records Act declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in the State because it gives the public an opportunity to monitor the functioning of their government. In accordance with the California Public Records Act and the Better Government Ordinance, any person is entitled to inspect and to receive copies of the public records of the County. Except with respect to those records described in Parts V, VI and VII below, upon receipt of a request for a copy of records that reasonably describes an identifiable, disclosable record or records, County staff is required make the records promptly available to any person upon payment of applicable fees.

I. DEFINITIONS

Following are definitions for terms as used in this bulletin:

- A. Public Record – Any existing writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by the County regardless of physical form or characteristics. Writings can include, but are not limited to, papers, books, maps, charts, photographs, audio tapes, videotapes, DVDs, CDs, flash drives, text messages, information stored on a computer, cell phone, tablet, flash drive or other electronic media, and other material.
- B. Disclosable Public Record – Writings that are not, in whole or in part, exempt from disclosure under the Public Records Act and the Better Government Ordinance.

- C. Confidential Legal Writings:
 - 1. Writings to or from the County Counsel's Office or other counsel representing the County concerning matters such as requests for legal advice, opinion or review; communications regarding pending or potential claims or litigation; and responses to legal counsel's request for information; and
 - 2. Writings that were either prepared by or for the County Counsel's Office or other counsel for the County or prepared for litigation, either planned or in progress.
- D. Other Exempt Writings – Writings, other than confidential legal writings, that have been determined to be exempt from disclosure because the writings fall within one of the exceptions to the Public Records Act. California Government Code section 6254 provides a partial list of documents that are potentially, but not necessarily, exempt from disclosure.
- E. Unusual circumstances – Circumstances that may significantly hinder the ready availability of public records, such as:
 - 1. the need to search for and collect the writings from offsite facilities;
 - 2. the need to search for, collect, and examine a voluminous amount of separate and distinct writings that are demanded in a single request;
 - 3. the need to consult with another agency having a substantial interest in the determination of the request or among two or more components of the agency having a substantial subject matter interest therein; or
 - 4. the need to compile data, to write programming language or a computer program, or construct a computer report to extract electronically-stored data.

II. GENERAL GUIDELINES

The following guidelines should be followed in responding to all Public Record Act requests:

- A. A requester is not to be asked to provide a reason for a request.
- B. A requester is not required to provide his/her identity to inspect or obtain disclosable public records.
- C. Each department should maintain a log or file of Public Records Act requests documenting:
 - 1. the date of the request,
 - 2. the subject matter,
 - 3. any mutual agreement to extend the statutory maximum production deadline,
 - 4. the number of documents and other writings produced,
 - 5. the date of production,

6. any applicable fees collected,
 7. receipts, and
 8. copies of any related correspondence.
- D. In responding to a Public Records Act request, the responding department must determine the disclosability of each responsive writing, regardless of whether a writing has previously been labeled as “Confidential” or “Exempt.”
- E. Subpoenas are different from Public Records Act requests. Consult Administrative Bulletin No. 133: “Subpoena Policy” concerning how to proceed if you receive a subpoena.
- F. Consult County Counsel if you are unsure whether a writing is a disclosable public record.
- G. If a specific writing does not exist that contains the requested information, you do not have to create such a writing, but in some circumstances, if feasible, you may be required to extract the data requested from existing writings.

III. GENERAL POLICY AND PROCEDURES REGARDING ACCESS TO PUBLIC RECORDS

- A. Locate and Produce Public Records Promptly. The general rule is that disclosable County records (writings that are not exempt, as discussed in Section V below) may be inspected anytime during regular business hours. [Gov. Code, § 6253(a)]. If copies are requested, they should be provided no later than the next business day if it is possible to do so. [Ord. Code, § 25-4.604]. Immediate production generally is possible when:
1. you can readily identify the writings being sought,
 2. you locate the requested writings.
 3. you determine that they are disclosable public records, and
 4. the requester pays any applicable copying fees, or just wants to look at the records without taking copies, or receive the records as an email attachment, in which case there is no fee.
- B. Locating Records. Below are some guidelines to help you find writings that are responsive to the request.
1. Review the Request. The request for inspection or copying of records should reasonably describe an identifiable writing or writings. [Gov. Code, § 6253(b)]. If the request is too vague for you to provide a response, you should ask the requester for clarification. [Gov. Code, § 6253.1].
 - a. Asking for Oral Clarification. You might ask the requester:
 - “Can you narrow the scope of your request to a specific date range?”

- “Can you think of any keywords I could use to search for this?”
 - “Do you know which County departments or officials might have originated the documents?”
- b. Written Clarification. Written requests help clarify what writings are being requested and permit the County to track the request. Although requesters are not required to put their requests in writing, some requesters may choose to make a written request or you can write down their oral request.
2. Search Physical and Electronic Locations for Public Records.
- a. Consult record indexes and filing systems for the department.
 - b. Look in logical places.
 - c. Ask knowledgeable persons about individuals who might have public records concerning the subject of the request.
 - i. If a person in your department may have responsive public records, ask that person to search all of their records, including the following:
 - (a) Physical records, such as papers, files, photos, DVDs, CDs, flash drives, etc.
 - (b) Records on the person’s County-issued electronic devices, including computers, cell phones and tablets.
 - (c) Records on the person’s County accounts, such as email accounts.
 - (d) Public records, including emails and texts, on the person’s **personal** electronic devices, including personal computers, cell phones and tablets.
 - (e) Public records on the person’s **personal** accounts, such as email accounts, social media accounts and cloud storage accounts.
 - ii. Persons who are asked to search their records must turn over all responsive public records to the person coordinating the search. To determine whether the record is a public or personal record, refer to Section IV, below.

- iii. A person who is asked to search his or her personal electronic devices and/or personal accounts may request DOIT to perform the search.
 - iv. If a department or person in another department may likely have responsive records, refer the request that department. (See Section III., G. concerning the referral process.)
 - d. If the department head determines that it is reasonably necessary, request that DOIT perform a search of electronic communications of your department.
 - 3. Procedures After an Individual Completes a Search of His/Her Records. After completing the search, each person who was asked to search their records should submit to the person responsible for coordinating the PRA response any responsive public records, even if those records might not be disclosable because they are subject to an exemption, such as attorney-client privilege, drafts, etc. Those determinations will be made by the person coordinating the search.
 - 4. Format of Production: When a requester seeks records in a certain format (for example, an Excel spreadsheet), produce the records in the requested format if they exist in the format. However, you are not required to convert the records into a particular format.
 - 5. Multi-Department Requests: If a request is sent to more than one department, consult with the County Administrator's Office concerning which department will coordinate the response.
- C. Delayed Response to Request for Production. As a practical matter, County staff may need time to identify and locate the writings. If the department can't immediately produce the requested writings and needs more time to provide a response, staff should do the following:
- 1. Request Contact Information. You may ask the requester for contact information so you can keep the requester updated about the production status or, if the requester prefers not to provide contact information, give the requester the name and phone number of a person in your department who can be called concerning the status of the request.
 - 2. Three-Day Notice. Within three business days after receipt of the request, send a letter to the requester, from the department head or their designee, notifying the requester that more time is needed to locate the requested writings. Absent "unusual circumstances," (as defined in Section I above) this letter will notify the requester that a response will be provided within ten calendar days after the date

of receipt of the request. A sample notification letter or email might look like this:

This is to inform you that the _____ *[name]*
Department has received your Public Records Act
request on _____ *[date]* _____. We anticipate that a
response to your request will be provided on or
before *[date - no more than 10 days from receipt of
original request]*. Please contact _____ *[name of staff
person]* _____ at *[phone number]* _____ if you have any
questions.

3. Ten-Day Notice. Within ten calendar days after receipt of the request, tell the requester whether your department was able to find the requested writings and whether any exception to the obligation to disclose the writings exists, or whether your department needs an extension of time to respond to the request. [Gov. Code, § 6253(c)]. The goal is to provide the records within ten calendar days if it is possible to do so. If it is not possible, then provide a good faith estimate as to when the writings can be provided (keeping in mind the general obligation to provide the records promptly). A sample letter is shown under Section III.D. below.
4. Extension Needed - Fourteen-Day Notice. If “unusual circumstances” exist (see the definition in Section I above), the law allows an extension of fourteen (14) calendar days to respond to the requester. [Gov. Code, § 6253(c)]. However, you must provide written notification of the extension to the requester. A sample notification letter or email might look like this:

This is to inform you that Contra Costa County needs to extend its time to respond to your Public Records Act request, which was received on _____ *[date]* _____. Your request involves searching for and collecting records from facilities separate from the County Administration Building, 651 Pine St., Martinez. Your request also involves examining a voluminous amount of separate and distinct records. Accordingly, due to these circumstances and pursuant to Government Code section 6253(c), the County must extend the time to respond to your request to *[date - no more than 24 calendar days from receipt of original request]*. Please contact me if you have any questions.

5. Negotiation of Extension – Confirmation Letter. If, under extraordinary circumstances, you believe you will be unable to produce requested writings

within the maximum statutory deadline, you may seek to negotiate an extended deadline with the requester. Any mutually agreed upon extension should be confirmed in writing with the requester immediately after you reach agreement to extend the deadline for the County's response. A sample confirmation letter or email might look like this:

This is to confirm our agreement providing Contra Costa County with additional time to respond to your Public Records Act request, which was received on [date]. Pursuant to our agreement, the County will respond to your request by [date]. We appreciate your patience as we assemble the requested information. Please contact me if you have any questions.

- D. Production and Payment of Fees. Once disclosable public records have been located, notify the requester that the documents are available for inspection, that responsive electronic documents (e.g., in a pdf format) are attached to the electronic response, or that copies may be obtained upon payment of any applicable fees. While the notification letter will vary according to the circumstances, a sample notification letter might look like this:

This is the [Name of Department] Department's response to your public records request, dated _____, 20__ and received by this office on _____, 20__. The [Name of Department] Department will produce records it possesses in response to your request. If you wish to inspect the records, the [Name of Department] Department is open from 8:00 a.m. to 5:00 p.m. (closed for lunch from noon to 1:00 p.m.). You may contact [Name of staff person], at (xxx) xxx-xxxx to schedule a time to inspect the documents.

If you would like copies of these records, the cost of copies will be \$_____ (_____ pages at \$.10 per page), plus \$_____ for postage, for a total of \$_____. To receive copies, please send your check for \$_____ payable to *Contra Costa County* to: [Name and address of Department]. When your check is received, the [Name of Department] Department will make copies and mail the records to you.

E. Applicable Fees

1. Ten Cent Per Page Fee for Hard Copies. Other than in the circumstances listed below, the County may charge a fee not to exceed ten cents per single-sided page,

- 20 cents for a double-sided page, plus any postage costs. [Ord. Code, § 25-4.610 (d)]. Electronic copies are free.
2. No Fee under Certain Circumstances. The County may not charge a fee for inspection of writings or for a copy of writings routinely produced in multiple copies for distribution, for example, meeting agendas and related materials that are twenty or fewer pages in length per document. [Ord. Code, § 25-4.610(a),(b)].
 3. One Cent Fee Under Certain Circumstances. The County may charge a fee of one cent for a copy of writings routinely produced in multiple copies for distribution, for example, meeting agendas and related materials that contain more than twenty pages per document. [Ord. Code, § 25-4.610(c)].
 4. Electronic Writings.
 - a. The County may charge a person requesting an electronic writing the direct cost of the media on which the information is duplicated. For writings provided electronically on a compact disc, a fee not to exceed \$3.00 may be charged, plus postage cost. [Gov. Code, § 6253.9]. If the electronic writing is provided as an email attachment (e.g., in a pdf format), there is no charge for the record.
 - b. When (1) the electronic writing is one that is produced only at scheduled intervals, or (2) production of the writing would require data compilation extraction, the requester may be charged the cost of producing a copy of the electronic writing, including the cost to construct a writing and the cost of programming and computer services necessary to produce a copy of the writing. [Gov. Code, § 6253.9].
 5. Outside Copy Services. Rather than making copies itself, the County may contract at the market rate to have a commercial copier produce the duplicates. [Ord. Code, § 25-4.610(e)]. Before copies are made by the outside copy service, the department should notify the requester of the cost and make arrangements for payment.
 6. State Law. If state law prescribes other fees, those fees may be charged in compliance with state law.
- F. Exempt Records. If you determine that some or all of the requested writings are exempt, send the requester a letter explaining why those requested writings are exempt. If you need help drafting this letter, you may ask the County Counsel's Office for assistance.
- G. No Responsive Writings. If your department does not have any disclosable documents that are responsive to the request:

1. Forward the Request to Other Departments. Attempt to determine if any other County department has documents that are responsive to the request. If you determine that another department may have responsive documents, send a formal memorandum to the department or departments that may have responsive writings, asking that they respond to the requester, and send a copy of the memo to the requester.
2. Notify the Requester. Notify the requester that your department has no disclosable documents that respond to the request.

IV. PUBLIC RECORDS ON PRIVATE DEVICES OR ACCOUNTS

- A. In deciding whether a communication sent or received on a private electronic device or personal account is a public record or a private one, certain factors should be considered:
 1. Content. Does the content of the communication to or from the personal account relate in a substantive way to the conduct of the County's business? "For example, depending on the context, an email to a spouse complaining [about work] would likely not be a public record. Conversely, an email to a superior reporting the coworker's mismanagement of an agency project might well be."¹
 2. Context/Purpose. Why was the communication written? Was it written to conduct the County's business or further the County's interest?
 3. Audience. To whom was the communication sent? Was it sent to a County employee, official, resident, consultant, etc.? Or was the email or text sent to a friend or family member?
 4. Scope. Was the communication written in the person's capacity as a County official or employee representing the County? Or was the communication written as a private person?
- B. Even if the communication is a public record, it may be exempt from disclosure. The determination of whether the public record is exempt or whether it is disclosable should be made by the department, not by the person whose record it is.

V. WHAT IS AND WHAT IS NOT A DISCLOSABLE PUBLIC RECORD

- A. Any person has a right to inspect any existing public record with the exception of the records exempted by the Public Records Act. The types of writings potentially exempt from disclosure under the Public Records Act include, but are not limited to, the following:

¹ *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 614.

1. Preliminary Drafts, Notes and Memoranda

Writings that are (1) notes, drafts or memoranda, and (2) which are not retained in the ordinary course of business, and (3) where the public interest in nondisclosure clearly outweighs the public interest in disclosure can be exempt. [Gov. Code, § 6254(a)]. If a document has resided on someone's computer or in a file for months or years, it may be difficult to claim that it is not retained in the ordinary course of business.

2. Confidential Legal Writings

Writings to or from the County Counsel's Office or other attorneys who represent the County, especially where advice is sought or given, may be exempt from disclosure. Writings that were either prepared by or for the County Counsel's Office or other attorneys who represent the County also may be exempt. [Gov. Code, §§ 6254(k), 6254.2; Evid. Code, § 950 et seq.] Records pertaining to pending and proposed litigation, excepting claims, may be exempt. [Gov. Code, § 6254(b); Ord. Code, § 25-4.404(b)].

Writings concerning advice about an actual or potential conflict of interest; analysis of a proposed legislative action or position; advice interpreting the Brown Act, the Public Records Act or similar laws; terms of the final settlement of litigation; and post-negotiation reports are not exempt. [Ord. Code, § 25-4.404(e)].

See Section I, for a complete description of "Confidential Legal Writings."

3. Personnel, Medical, or Similar Records

This exemption generally pertains to writings concerning intimate or personal information. [Gov. Code, § 6254(c)]. For example, employee performance evaluations, home addresses, and home telephone numbers are all personal information, subject to this exemption.

Certain other public employee information may be released, such as: (1) an employee's gross salary, job classification, and dates of employment; (2) writings submitted in Merit Board and arbitration disciplinary proceedings; (3) information in cases of emergency or need when such disclosure appears reasonable to protect any person's health or welfare; (4) information for authorized criminal law enforcement purposes; (5) information required by subpoena, testimony or other legal process (see Administrative Bulletin No. 133: "Subpoena Policy"); (6) information that is authorized to be released to third parties by the written consent of the affected employee (see Administrative Bulletin No. 431: "Reference Checks and Release of Employee Information"); and (7) other information, only

when reviewed and approved by County Counsel prior to release. [Ord. Code, § 25-4.404(c)].

4. Investigatory Records Compiled for Correctional or Law Enforcement Purposes

Records of complaints, preliminary inquiries to determine if a crime or violation of law has been committed, full investigations, and memoranda “closing” an investigation are generally considered to be exempt from disclosure.

Investigatory reports can include code enforcement activities. There are specific statutory provisions relating to law enforcement agencies and what must be disclosed and what must be withheld, so direct any questions in this regard to the County Counsel’s Office. [Gov. Code, § 6254(f); Ord. Code, § 25-4.404(d)].

5. Examination Data

Test questions, scoring keys, and other examination data used to administer a licensing, employment or academic examination may be exempt from disclosure. [Gov. Code, § 6254(g)].

6. Real Estate Appraisals or Engineering Studies

Real estate appraisals and engineering studies relating to the acquisition of property or to prospective construction contracts, until all of the property has been acquired or all services under the contract have been provided, may be exempt from disclosure. If an appraisal relates to eminent domain litigation, however, check with the County Counsel’s Office regarding whether the writing is disclosable. [Gov. Code, § 6254(h)].

7. Health Services Contracts

Certain Health Services contracts between the County and the State and writings related to those contracts may be exempt, in whole or in part. [Gov. Code, § 6254(q), (t), (v), (w) and (y); Evid. Code, § 1040; and Gov. Code, § 6254.14].

8. Particular Statutory Exemptions

There also are a number of particular exemptions that are related to specific situations, including agricultural information, health facilities, assessment records, etc. Depending on the nature of the request, these exemptions may apply.

Note: Under the Contra Costa County Better Government Ordinance, no records may be withheld on the basis that the public interest in non-disclosure “clearly outweighs” the public interest in disclosure [Gov. Code, § 6255] unless the County Counsel has reviewed the response and provided written approval to withhold the records on this ground.

- B. Questions Regarding Disclosability. If you are uncertain about whether a writing may be withheld from disclosure, consult with County Counsel. Do not disclose a writing if you have questions regarding its disclosability until County Counsel renders advice, but make sure to provide the requester with a timely letter concerning the status of the request, as required by the Better Government Ordinance. [Ord. Code, § 25-4.604].

VI. HANDLING SENSITIVE WRITINGS

This section describes the procedures to be used in handling various types of sensitive writings.

A. Confidential Legal Writings

1. Security of Confidential Legal Writings. Each County department head is responsible for providing for the security of all confidential legal writings. (See Section I for definition of “Confidential Legal Writings.”)
 - a. Files.
 - i. Separate Files. Confidential legal writings should be kept in files separate from files for other writings, whether these files are in paper or electronic form. No writings other than confidential legal writings are to be placed in files used for storage of confidential legal writings.
 - ii. Files Relating to Litigation. Electronic and paper files for confidential legal writings concerning threatened or pending litigation should be separated from files for other confidential legal writings.
 - iii. Limited Access. Access to electronic and paper files containing confidential legal writings is to be limited to County staff with a need to see the contents of the files.
 - b. Copying/Forwarding. Confidential legal writings should not be copied or forwarded except as authorized by County Counsel. County staff should not keep personal copies of confidential legal writings.
2. Distribution of Confidential Legal Writings. Contact the County Counsel’s Office before distributing a confidential legal writing to anyone other than the designated recipients.
3. Questions Regarding Confidential Legal Writings. If you are uncertain as to whether a particular writing is a confidential legal writing, seek advice from the County Counsel’s Office. The writing in question should be treated as confidential until County Counsel resolves its status.

B. Handling Other Exempt Writings

This subsection sets forth recommended procedures to be used in handling writings that are exempt under the Public Records Act, but that are not confidential legal writings.

1. Storage of Other Exempt Writings. Exempt writings should be kept in electronic or paper files separate from disclosable public records. No writings other than exempt writings are to be placed in files used for storage of exempt writings.
2. Identification of Exempt Writings.
 - a. Documents. Exempt documents, whether in paper, electronic or other formant, should be labeled or marked “EXEMPT” or “CONFIDENTIAL” in bold, large type, so as to be easily distinguished from disclosable public records.
 - b. Email. Exempt electronic communications, such as emails, should be labeled as “EXEMPT” or “CONFIDENTIAL” in the subject and body of the communication and maintained in secure, password protected electronic storage.

C. Writings Sent to a Quorum of the Board of Supervisors or Other Policy Body

The Clerk of the Board of Supervisors should be provided with a copy of any writing that is sent to or received by a quorum of the Board of Supervisors or other policy body. The Clerk of the Board of Supervisors maintains a hard copy of these documents in a file that is accessible to the public. [Ord. Code, § 25-4.402].

VII. DEPARTMENT POLICIES

Departments may, if they so desire, adopt implementing departmental policies on this matter, taking these regulations into account. Such departmental policies are subject to review and approval by the County Administrator’s Office before they are implemented. In preparing departmental policies, be aware of the County’s obligations under Better Government Ordinance [Ord. Code, §§ 25-4.2 et seq.], as well as the Public Records Act [Gov. Code, §§ 6250 et seq.]. If your department has an automatic record destruction policy, writings subject to the Public Records Act should be preserved until a reasonable period after the response is complete.

/s/

David J. Twa
County Administrator

Orig. Depts.: County Administrator's Office

References: Administrative Bulletin No. 133: "Subpoena Policy"

Administrative Bulletin No. 431: "Reference Checks and Release of Employee Information"

California Government Code §§ 6250 et seq.

County Ordinance Code §§ 25-4.2-2 et seq.