

San Francisco Bay Conservation and Development Commission

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San Francisco Bay Conservation and Development Commission Guidelines for Access to Public Records November 3, 2016

California citizens have a right to access public records maintained by government agencies, including the San Francisco Bay Conservation and Development Commission (Commission or BCDC). That right is provided for in the State constitution and the California Public Records Act (Government Code Sections 6250 to 6276.48), and it includes the right to inspect and copy records of state and local government agencies.

As the California Legislature stated in enacting the California Public Records Act, “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” However, the Legislature also recognized the need to balance the public’s right to know against competing constitutional rights to privacy and the government’s need to perform its functions in a reasonably efficient manner. Consequently, the Public Records Act maintains the confidentiality of some records by providing certain exemptions from disclosure and incorporating several other statutes that prohibit state employees from disclosing certain types of records. The Public Records Act also establishes reasonable procedures providing for prompt disclosure while allowing government agencies the time to locate records and determine which records, if any, are exempt from disclosure.

The Commission’s policy is to provide members of the public broad and convenient access to BCDC records and to promptly make the fullest possible disclosure of its records. BCDC staff is available to assist persons requesting Commission records to make focused and effective requests that reasonably describe identifiable records. Because some BCDC records are exempt from disclosure under the California Public Records Act, it may be necessary for BCDC staff to review a request to determine whether those exemptions apply before the records can be made available for review and copying. In those cases, the BCDC staff review will be completed as expeditiously as is feasible.

Please note that many Commission records are available on the Commission’s website including but not limited to: plans, policies, reports, meeting agendas, staff reports and other materials provided to the Commission, its advisory boards, and working groups in connection with their meetings, and meeting minutes or summaries.

GUIDELINES

Direct Your Request to BCDC’s Legal Division

The Commission has designated its Legal Division to facilitate responses to public records requests. Whenever possible, requests for records should be submitted to the BCDC Legal Secretary by either United States mail or by email:

Legal Secretary
San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102
publicrecords@bcdc.ca.gov

Directing your request to the BCDC Legal Secretary will make it easier for BCDC to track and process your request, which will result in your receiving a more prompt response.

Written Requests Encouraged

The Commission strongly encourages, but does not require, requests for records to be made in writing. Written requests help BCDC respond to the requests and correctly identify the records requested. Responses to written requests will be provided in writing. When requests are made orally, BCDC staff may confirm the request in writing to ensure it has correctly understood the request.

Public Records Defined

“Public records” include any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by BCDC regardless of physical form or characteristics.

“Writing” means any handwriting, typewriting, printing, photography, photocopying, and every other means of recording any form of communication or representation, including letters, pictures, sounds, or symbols, or combinations thereof, and any record thereby created regardless of whether the information is recorded or stored on paper, computer files, email, or audio or visual media.

The California Public Records Act provides for the disclosure of existing identifiable records (unless they are exempt from disclosure). The Commission is not required to prepare new records in response to a request for information, or to compile, synthesize, summarize, or index information or records in a form that does not exist at the time of the request.

Identifying Records

To help BCDC provide records promptly, requesters should provide specific information about the records they seek. Whenever possible, and as applicable, a request should:

- Describe the subject matter of the requested records;
- Identify the street address, city or county, and/or BCDC permit number to which the request relates, if known;
- Include document titles, authors, and any other known information about the requested records; and,
- Identify specific dates or a date range of the requested records.

Vague or unnecessarily broad descriptions of records (*e.g.*, a request for all records “relating to” a general subject) will delay BCDC’s response to the request and may result in a larger volume of records than the requester intended.

Inspection of Public Records

Public records maintained by the Commission are available for inspection during BCDC’s regular business hours (Monday through Friday, excluding state holidays). Members of the public are not required to give notice to inspect public records during those hours. However, if the request requires BCDC staff to retrieve, review, or redact records, or if BCDC staff needs sufficient time to review files to separate records that will be disclosed from records that are exempt from disclosure, a mutually agreeable time should be established to inspect the records. Inspecting public records is subject to a rule of reason as to time and duration, and must be consistent with the efficient functioning of Commission offices.

To prevent records from being lost, damaged, or destroyed during an inspection, BCDC staff will determine the location of and monitor the inspection.

Processing Requests for Copies of Records

When a copy of a record is requested, and the record cannot be provided immediately, BCDC will determine, within 10 days after receipt of the request, whether it has records responsive to the request, and will inform the requester of its decision and the reasons for the decision. The initial 10-day period may be extended for up to 14 additional days if BCDC needs to:

1. Search for and inspect voluminous records.
2. Consult between or among BCDC divisions or with other agencies.
3. Construct a computer report to extract data.

Whenever possible, BCDC will provide records at the time the determination is made to disclose them. If immediate disclosure is not possible, BCDC will provide an estimated date when the records will be available, and will endeavor to provide the records within a reasonable period of time.

In general, BCDC staff will need more time to locate, review, and assemble a large number of records than to locate and provide one or several documents. Similarly, copying a large volume of records will generally take more time than if a requester seeks to inspect records.

Copying Fees

BCDC may charge the direct cost of duplication when it provides copies of records to the public. The direct cost of duplication includes the pro rata expense of the duplication equipment and staff time required to make a copy of the record. Direct cost does not include the staff’s time to retrieve, review, redact, and mail the record.

For black and white copies of standard-sized paper (i.e. 8 ½ X 11" or 8 ½ X 14), the direct cost of duplication is 10 cents (\$0.10) per page. Higher direct costs may be charged for color copies and to duplicate over-sized documents such as large architectural drawings, site plans, or maps. If BCDC staff sends a request for copies of over-sized documents or a large number of records to an offsite vendor, duplication costs will be charged at the vendor's actual service rate.

When requests are made for copies of records maintained in an electronic format, BCDC may charge an amount sufficient to cover the cost of the media used (*e.g.*, a CD or DVD) and the time spent compiling and duplicating the records. When BCDC staff must compile electronic data, extract information from an electronic record, or perform computer programming to satisfy a request, BCDC may require the requester to bear the full cost, not just the direct cost, of duplication.

Exemptions

BCDC will provide access to all public records upon request unless the law provides an exemption from mandatory disclosure under the California Public Records Act. Those exemptions are set forth in the California Public Records Act (Government Code Sections 6250-6276.48) and may be consulted by anyone interested in reviewing the full text of the exemptions. Below is a summary of several of the most common exemptions:

1. Preliminary drafts, notes, or inter-agency or intra-agency memoranda that are not retained by BCDC in the ordinary course of business;
2. Records pertaining to pending litigation to which the Commission is a party, or to certain claims made against the Commission, until such litigation or claim has been finally adjudicated or otherwise settled;
3. Personnel, medical, or similar files, the disclosure of which could constitute an unwarranted invasion of personal privacy;
4. Records relating to investigations conducted by the Commission;
5. Records that are privileged under the California Evidence Code, including but not limited to attorney-client communications and attorney work-product;
6. Any records for the disclosure of which is exempted prohibited by federal or state law;
7. Correspondence from or to the Governor or the Governor's Office.

The California Public Records Act also allows BCDC to withhold records that do not fall within a specific exemption if the agency determines the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure.

Identification of Requesters

BCDC staff will not require that persons requesting to inspect records provide identification, or the reasons for wanting to inspect records. However, BCDC encourages persons requesting records to include a telephone number or e-mail address in the event that BCDC staff has questions about the request. Contact information is mutually beneficial to the requester and

BCDC staff as it gives staff the ability to resolve ambiguities or uncertainties regarding the requested records and to expedite the identification of the records being sought. If records are to be picked up or mailed to a requester, relevant identifying information must be provided. Persons wishing to enter the building in which BCDC's offices are located to inspect records must comply with applicable security protocols.

Additional Information

A copy of these guidelines shall be posted in a conspicuous public place in the BCDC offices and on the Commission's website. A copy of these guidelines shall be available free of charge upon request to any member of the public.

The following proposed frequently asked questions and responses are not part of the Guidelines. Staff may update or revise the FAQs without Commission approval, provided that any revisions are consistent with the Guidelines.

Frequently Asked Questions about Accessing Public Records Maintained by BCDC

How Can I Make A Request for Public Records?

BCDC strongly encourages, but does not require, requests for records to be made in writing. To make a written request, send a letter or email to:

Legal Secretary
San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102
publicrecords@bcdc.ca.gov

A written request need not be in any particular form, but should describe the requested records with sufficient specificity to enable BCDC staff to identify and locate the records requested. The request should include a telephone number or email address where you can be contacted regarding the request if we need additional information to locate records for you.

Although BCDC prefers written requests, members of the public may make an oral request for public records.

How Long Does It Take to Reply to a Public Records Act Request?

Most simple requests for public records can be fulfilled in fewer than 10 days. Within 10 days from the date the request is received, BCDC will determine whether it has records responsive to the request and will notify you of its determination. If the determination will not be made within 10 days due to unusual circumstances, BCDC will notify you of the reasons for the delay and the date when the determination will be issued. BCDC may request additional information if the records request is not specific enough to permit the identification of the requested records. If BCDC determines that it has records responsive to the request, the records will be made available as promptly as is reasonably practicable.

What Will BCDC's Response to a Records Request include?

In responding to records requests, BCDC will advise you of: (1) the location, date, and time at which the requested records may be available; (2) if copies of records are requested, the costs of providing such copies, which must be paid to obtain the copies; and (3) whether any of the requested records are not subject to disclosure pursuant to the applicable provisions of the California Public Records Act. BCDC will usually provide this information in a letter delivered by U.S. mail, but may respond by e-mail or telephone.

When May Public Records Be Inspected?

Public records are available for inspection during BCDC's regular business hours (Monday through Friday, excluding state holidays). However, the inspection of public records is subject to a rule of reason as to time and duration and must be consistent with the efficient functioning of BCDC's offices. In addition, BCDC staff may need sufficient time to review files to separate records that will be disclosed from records that are exempt from disclosure under the California Public Records Act. BCDC requests that any person who wishes to inspect public records contact BCDC's offices in advance to make an appointment to inspect the records at a mutually agreeable time.

Are There Any Fees Involved?

There is no fee to review public records. A request for a copy of a public record must be accompanied by payment of fees to cover the direct cost of duplication, which will typically be 10 cents (\$0.10) per standard reproduced page. Higher costs may be charged for color copies and to duplicate over-sized documents such as large architectural drawings, site plans, or maps. If a request for copies of over-sized documents or a large number of records is sent to an offsite vendor, duplication costs will be charged at the vendor's actual service rate.

When requests are made for copies of records maintained in an electronic format, BCDC may charge an amount sufficient to cover the cost of the media used (*e.g.*, a CD or DVD) and the time spent compiling and duplicating the records.

What Records Are Not Subject to Inspection or Copying?

In balancing the public's right to access public records with the recognized individual right of privacy and the need for BCDC to be able to competently perform its duties, the Legislature has established certain categories of records that are exempt from disclosure. A complete list of statutory exemptions is found in the California Public Records Act (Government Code Sections 6250-6276.48). Examples of records exempt from disclosure include certain personnel records, investigative records, drafts, confidential legal advice, records prepared in connection with litigation, and information that may be kept confidential pursuant to other state or federal law.

May I Bring In My Own Computer, Scanner, Camera or Retain a Copy Service to Copy Records?

Members of the public may pay a bonded copy service company to come to BCDC offices to make copies. If you wish to bring your own computer, scanner, camera, or copier to BCDC's offices to make copies of requested records, you may do so but are requested to call BCDC in advance to make such arrangements. BCDC may not allow the use of copiers or scanners with automatic feeders because such feeders can cause damage to records.

Can One Obtain Copies of Records in Electronic Format?

If a request seeks public records in an electronic format, BCDC will provide those public records that are not exempt from disclosure in an electronic format if the Commission has them in that format at the time the request is received.

Are There Rules That Govern the Handling of Original Records?

Yes. Since many of BCDC's records are original, of historical value, and sometimes fragile, you are required to handle all records carefully, using only a pencil, paper, or electronic device to take notes. No food or drink is allowed near the records at any time. Records to be copied or scanned must be placed individually on the placement glass surface. BCDC staff may observe the file review in order to protect the integrity of the records. Your cooperation in maintaining the integrity of BCDC records is appreciated and will ensure that important records will be available in the future.

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